TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 97

JACK GEBARDI AND LOUISE ROLFE GEBARDI,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,793)

(36,793)

SUPREME COURT OF THE UNITED STATES

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the division and district aforesaid on the first Monday of October, (it being the seventh day thereof) in the year of our Lord One Thousand Nine Hundred and Twenty-Nine and of the Independence of the United States of America the 153rd year. Present the Honorable James H. Wilkerson, and the Honorable John P. Barnes, Judges of said Court and the Honorable Walter C. Lindley, Judge of the District Court of the United States for the Eastern District of Illinois, sitting in this Court by designation, presiding, H. C. W. Laubenheimer, United States Marshal for said District and Charles M. Bates, Clerk of said Court. Placita.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

The United States
vs.
Jack Gebardi otherwise called Jack McGurn otherwise called Jim Vincent D'Oro and Louise Rolfe. } No. 20592.

Be it remembered that heretofore, to wit, on the 1st day of November A. D. 1929, the following order was had and entered of record in the above entitled cause in said Court, before the Honorable James H. Wilkerson, Judge, to-wit:

1, 3 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Friday, November 1st, A. D. 1929.

Present: Honorable James H. Wilkerson, Judge.

The United States
vs.
Jack Gebardi alias } No. 20592.

This day comes the Grand Jury and returns in open court an indictment against Jack Gebardi alias Jack McGurn alias Jim Vincent O'Oro and Louise Rolfe the defendants herein whereupon motion of the United States Attorney.

It Is Ordered By The Court that the said indictment be filed and the cause placed upon the dockets of this Court and that the bond filed before the United States Commissioner are to stand as bonds in this indictment.

4 And afterwards, to wit, on the 1st day of November A. D. 1929 there was filed in the Clerk's Office of said Court in the above entitled cause, an "Indictment", same being in the words and figures following, to-wit: Filed 192

5 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

Of the October Term, in the year 1929.

Northern District of Illinois, } ss.
Eastern Division; }

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the October Term of said court in the year 1929, and inquiring for said division and district, upon their oath present, that Jack Gebardi, otherwise called Jack McGurn, otherwise called, Jim Vincent D'Oro, a man, and Louise Rolfe, each late of said Eastern Division of said Northern District of Illinois, hereinafter called defendants, on, to wit, December 18, 1928, in said division and district, unlawfully and feloniously did conspire, combine, confederate and agree together, and with divers other persons to said grand jurors unknown, to commit an offense against the United States, that is to say, to transport said defendant Louise Rolfe, a woman, from the City of Chicago, in the State of Illinois, and in and through said division and district, to the City of Miami, in the State of Florida, over the lines of one or more railroad common carriers to said grand jurors unknown, for an immoral purpose, to wit, for the purpose of their having unlawful sexual intercourse, they not then and there being husband and wife.

6 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, at the time and places in that behalf hereinafter set forth, did do, among others, certains acts to effect the object of said unlawful and felonious conspiracy, combination, confederation and agreement.

Overt Acts.

1. On, to wit, December 18, 1928, said defendants met at said City of Chicago, in the division and district aforesaid.
2. On, to wit, December 18, 1928, at said City of Chicago, in the division and district aforesaid, said defendants boarded a car on a railroad bound for the State of Florida (the exact name and description of which is to the said grand jurors unknown.)
3. On, to wit, December 18, 1928, said defendants travelled together through the Eastern Division of the Northern District of Illinois on said car bound for the State of Florida.

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, at the time and places, and in manner and form, aforesaid, unlawfully and feloniously did conspire, combine, confederate and agree together, and with others, to commit an offense against the United States, and did do acts to effect the object of the conspiracy; Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

7 Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'Oro, and Louise Rolfe, each late of the said Eastern Division of the Northern District of Illinois, hereinafter called defendants, on, to wit, January 25, 1929, in said division and district, unlawfully and feloniously did conspire, combine, confederate and agree together, and with divers other persons to said grand jurors unknown, to commit an offense against the United States, that is to say, to transport said defendant Louise Rolfe, a woman, from the City of Gulfport, in the State of Mississippi, to the City of Chicago, in the State of Illinois, into and through said division and district, over the lines of one or more railroad common carriers to said grand jurors unknown, for an immoral purpose, to wit, for the purpose of their having unlawful sexual intercourse, they not then and there being husband and wife.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendants, at the time and

places in that behalf hereinafter set forth, did do, among others, certain acts to effect the object of said unlawful and felonious conspiracy, combination, confederation and agreement.

Overt Acts.

1. On, to wit, January 25, 1929, said defendants met at said City of Chicago, in the division and district aforesaid.
2. On, to wit, January 27, 1929, at the City of Gulfport, in the State of Mississippi, said defendants boarded a car on a railroad bound for the City of Chicago, in the State of
8 Illinois, (the exact name and description of which is to the said grand jurors unknown).
3. On, to wit, January 28, 1929, said defendants travelled together through the Eastern Division of the Northern District of Illinois on said car bound from the State of Mississippi.

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, at the time and places, and in manner and form, aforesaid, unlawfully and feloniously did conspire, combine, confederate and agree together, and with others, to commit an offense against the United States, and did do acts to effect the object of the conspiracy; Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

9 Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'Oro, and Louise Rolfe, each late of the said Eastern Division of the Northern District of Illinois, hereinafter called defendant, on, to wit, January 25, 1929, in said division and district, unlawfully and feloniously did conspire, combine, confederate and agree together, and with divers other persons to said grand jurors unknown, to commit an offense against the United States, that is to say, to transport said defendant Louise Rolfe, a woman, from the City of Chicago, in the State of Illinois, in and through said division and district, to the City of Jacksonville, in the State of Florida, over the lines of one or more railroad common carriers to said grand jurors unknown, for

an immoral purpose, to wit, for the purpose of their having unlawful sexual intercourse, they not then and there being husband and wife.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said defendant, at the time and places in that behalf hereinafter set forth, did do, among others, certain acts to effect the object of said unlawful and felonious conspiracy, combination, confederation and agreement.

Overt Acts.

1. On, to wit, January 25, 1929, said defendants met at said City of Chicago, in the division and district aforesaid.

2. On, to wit, January 25, 1929, at said City of Chicago, in the division and district aforesaid, said defendants boarded a car on a railroad bound for the State of Florida (the exact name and description of which is to the said grand jurors unknown).

3. On, to wit, January 25, 1929, said defendants travelled together through the Eastern Division of the Northern District of Illinois on said car bound for the State of Florida.

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, at the time and places, and in manner and form, aforesaid, unlawfully and feloniously did conspire, combine, confederate and agree together, and with others, to commit an offense against the United States, and did do acts to effect the object of the conspiracy; Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

GEORGE E. Q. JOHNSON,
United States Attorney.

Endorsed: No. 20592. United States District Court, Northern District of Illinois, Eastern Division. The United States of America *vs.* Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'Oro, and Louise Rolfe. Indictment. Vio. Sec. 2, Act June 25, 1910. Mann Act. White Slave Traffic Act. (Unlawfull Transporting a Certain Female in Interstate Commerce). A true bill, B. A. Alley, Foreman. Filed in open Court this 1st day of Nov., A. D. 1929. Charles M. Bates, Clerk.

12 And afterwards, to wit, on the 16th day of April A. D. 1931 the following order was had and entered of record in said cause, before the Honorable John P. Barnes, Judge, to-wit: Ent

13 * * (Caption) * *

Tuesday, April 16th, A. D. 1931.

Present: Honorable John P. Barnes, Judge.

Comes the United States by the United States Attorney comes also the defendant Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe in their own proper persons and being arraigned upon the indictment filed herein against them each defendant pleads not guilty thereto and it is

Ordered that this cause be and the same is hereby set for trial May 25th, 1931.

14 And afterwards, to wit, on the 19th day of May A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Notice", same being in the words and figures following, to wit: File 19

15 * * (Caption) * *

NOTICE.

Honorable George E. Q. Johnson
United States District Attorney,
Federal Building.

Please take notice that on Tuesday, May 19th, 1931, at the hour of 10:00 A. M., or as soon thereafter as counsel may be heard we shall appear before the Honorable John P. Barnes, Judge in the above entitled cause, and present a motion for substitution of attorneys for the defendants in the above entitled cause and ask that the same be entered at once: we shall further ask:

1. That the attorney for the plaintiff furnish the defendant with a Bill of Particulars.
2. That on or before three days before the trial of said

cause that the attorney for the plaintiff furnish the defend ants with a list of its witnesses called in said cause and a list of the jurors.

3. That all conspirators be set forth in the indictment.

At which time and place you may be present if you see fit.

HARRY F. HAMLIN
HOWARD H. MCCORMICK
Attorneys for defendants.

Received copy of the above this 18th day of May A. D. 1931.

GEORGE E. Q. JOHNSON
L.

16 And afterwards, to wit, on the 26th day of May A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause "Waiver of Jury", same being in the words and figures following, to wit:

17 * * (Caption) * *

JURY WAIVER.

Now comes Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, in his own proper person, and by his attorney, and ask leave of Court to waive a trial by jury in the above entitled cause, and further ask leave of Court that the said cause be tried by the Court without a jury.

VINCENT GEBARDI
Defendant.
HARRY F. HAMLIN
Attorney for Jack Gebardi, alias, etc.

The United States of America, by George E. Q. Johnson, United States Attorney for the district aforesaid, hereby consents to a trial of the above named defendant by the Court without a jury.

GEORGE E. Q. JOHNSON
United States Attorney.

18 And afterwards, to wit, on the 26th day of May A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause "Waiver of Jury," same being in the words and figures following, to wit:

19 * * (Caption) * * Fil

JURY WAIVER.

Now comes Louise Rolfe, in her own proper person, and by her attorney, and ask leave of Court to waive a trial by jury in the above entitled cause, and further ask leave of Court that the said cause be tried by the Court without a jury.

MRS. VINCENT GEBARDI
Defendant.
HARRY F. HAMLIN
HOWARD H. MCCORMICK
Attys for Louise Rolfe.

The United States of America, by George E. Q. Johnson, United States Attorney for the district aforesaid, hereby consents to a trial of the above named defendant by the Court without a jury.

GEORGE E. Q. JOHNSON
United States Attorney.

20 And afterwards, to wit, on the 26th day of May A. D. 1931, the following order was had and entered of record in said Court before the Honorable John P. Barnes, Judge, to wit: Ente 19

21 * * (Caption) * *

Tuesday, May 26th, A. D. 1931

Present: Honorable John P. Barnes, Judge.

Comes the United States by the United States Attorney comes also the defendants Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe in their own proper persons and thereupon the defendants enter herein their motion for the Government to elect as to second or third count which motion is overruled to which ruling of the Court the defendants by their attorneys here and now duly except and thereupon this cause is submitted to the court for trial without a jury and the court now hereafter hearing part of the evidence adduced it is

Ordered that the further trial of this cause be and the same is hereby continued to 10 A. M. May 27th, 1931.

24 And afterwards, to wit, on the 28th day of May A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to wit:

25 * * (Caption) * *

Thursday, May 28th, A. D. 1931

Present: Honorable Walter C. Lindley, Judge

This day again come the parties by their attorneys respectively and the defendants in their own proper persons and thereupon at close of plainitff's evidence the defendants by their attorneys enter herein their motion for a finding of not guilty as to each defendant which motion is overruled to which ruling of the court the defendants by their attorneys here and now duly except and thereupon at close of all the evidence the defendants renew their motion for findings of not guilty which motion is overruled to which ruling of the Court the defendants by their attorneys here and now duly except and the court now hereafter hearing all the evidence adduced

It Is Ordered that briefs be submitted by the Government within ten days and defendants to file reply briefs in 10 days thereafter the government to file reply briefs in five days thereafter and this cause is taken under advisement.

26 And afterwards, to wit, on the 6th day of June A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Notice," same being in the words and figures following, to wit:

27 * * (Caption) * *

NOTICE.

To Harry F. Hamlin, and Howard H. McCormick, Attorneys for Defendants 123 W. Madison St., Chicago, Ill.

Please take notice that on Tuesday, June 9, 1931 at ten o'clock A. M., or as soon thereafter as counsel can be heard, I shall appear before the Honorable Walter C. Lindley in

the court room in the Federal Building, Chicago, Illinois, in which he may then be sitting and move the court to re-open the above entitled case and grant leave to the United States of America to recall as witnesses for the government one of the employees of each of the hotels known as Hotel LaSalle and Hotel Lexington, for the purpose of further testifying in the above case, and thereby put in evidence additional testimony showing that the said hotels are located in the City of Chicago, State of Illinois:

At which time and place you may appear and defend if you so see fit.

(Signed) GEORGE E. Q. JOHNSON
George E. Q. Johnson
United States Attorney.

Received a copy of the above notice this ..... day of June A. D. 1931.

H. F. HAMLIN,
Judge.
By BERNICE BANER,
Attorneys for defendants.

28 And afterwards, to wit, on the 9th day of June A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to wit:

29 * * (Caption) * *

Tuesday, June 9th, A. D. 1931.

Present: Honorable Walter C. Lindley, Judge.

Comes the United States by the United States Attorney comes also the defendants Jack Gebardi alias Jack McGurn and Louise Rolfe in their own proper persons thereupon the United States Attorney enters herein his motion to vacate the order entered May 28th, 1931 "Government Rests" which motion is allowed to which ruling of the court the defendants by their attorneys here and now duly except and on motion of the United States Attorney it is

Ordered that leave be and the same is hereby given to in-

troduce additional evidence and the Court now hereafter hearing the evidence adduced by the plaintiff the Government rests and the defendants by their attorneys enter herein their motion for a directed verdict which motion is overruled to which ruling of the Court the defendants by their attorneys here and now duly except and thereupon at close of all the evidence the defendants by their attorneys enter herein their motion for a directed verdict which motion is overruled to which ruling of the court the defendants by their attorneys here and now duly except.

30 And afterwards, to wit, on the 22nd day of June A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Notice," same being in the words and figures following, to wit:—

31 * * (Caption) * *

To: Harry F. Hamlin Esq., Howard H. McCormick, Esq., 123 W. Madison St., Chicago, Illinois.

Please Take Notice, that on Wednesday, July 8, 1931, at ten o'clock A. M., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Walter C. Lindley, in the court room in the Federal Building, Chicago, Illinois, in which he may then and there be sitting, and move the court to reopen the above entitled case and grant leave to the United States of America to recall one C. G. Olivaros, or if he cannot be recalled, to call as a witness the baggage agent for the Florida East Coast Railway Company at St. Augustine, Florida, and correct the testimony of C. J. Olivaros wherein he testified on Thursday, May 28, 1931 that the Florida East Coast Railway kept no records which would show that baggage coming in to St. Augustine, Florida, was checked out again on other numbers and to correct his testimony wherein he stated that the records in St. Augus-

32 tine showing that baggage coming into St. Augustine, on January 27, 1929, under baggage checks numbers 307912 and 307913, did not show that the same baggage went out for Biloxi, Mississippi under baggage checks numbers 162021 and 162022, and to put in evidence "Check sheet out bound baggage" with reference to this baggage as kept by the said Florida East Coast Railway Company as a part of its rec-

ords of January 27, 1929, at which time and place you may appear and defend if you so see fit.

(Signed) GEORGE E. Q. JOHNSON
GEORGE E. Q. JOHNSON
United States Attorney.

Received a copy of the above and foregoing notice this 22nd day of June A. D. 1931.

HOWARD H. MCCORMICK
HARRY F. HAMLIN
Attorneys for defendants.

33 And afterwards, to wit, on the 8th day of July A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to-wit:—

34 * * (Caption) * *

Wednesday, July 8th, A. D. 1931.

Present: Honorable Walter C. Lindley, Judge.

Comes the United States by the United States Attorney come also the defendants in their own proper persons and on motion of the United States Attorney,

It Is Ordered that leave be and the same is hereby given to recall a witness for the purpose of correcting certain testimony to which ruling of the Court the defendants by their attorneys here and now duly except, and thereupon at close of the Government's evidence the defendants by their attorneys enter herein their motion for a directed verdict which motion is overruled, to which ruling of the Court the defendants by their attorneys here and now duly except, and thereupon at close of all the evidence the defendants by their attorneys renew their motion for a directed verdict which motion is overruled to which ruling of the Court the defendants by their attorneys here and now duly except.

35 And afterwards, to wit, on the 21st day of July A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause, "Finding of the Court", same being in the words and figures following, to wit:—

36 * * (Caption) * *

FINDING OF THE COURT.

Defendants, indicted upon three counts for conspiring to violate the Mann act, pleaded not guilty, waived a jury and were tried before the court.

There was no commercial purpose involved in the transportation charged, but such purpose is not a material element of the crime forbidden by the Mann act. *Canninette* v. *U. S.* 242 U. S. 470. There was no direct evidence of sexual intercourse, but the undisputed circumstances carry to the court absolute conviction that the transportation proved had such intercourse for its purpose and that defendants conspired as charged.

After a careful consideration of the evidence submitted and of the briefs and arguments of counsel I am convinced beyond any doubt that defendants are guilty and that no defense of any character exists.

The court therefore finds both defendants guilty in manner and form charged in each count of the indictment.

Dated July 21, 1931.

WALTER C. LINDLEY,
Judge.

21. 37 And afterwards, to wit, on the 21st day of July A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to-wit:—

38 * * (Caption) * *

Tuesday, July 21st, A. D. 1931.

Present: Honorable Walter C. Lindley, Judge.

This day again come the parties by their attorneys respectively, and the defendants Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'oro, and Louise Rolfe, in their own proper persons, and the Court having heretofore heard the evidence by the parties adduced and arguments of counsel and being now fuly advised in the

premises finds the defendants guilty as charged in each count of the indictment.

Whereupon the defendants by their attorneys enter herein their motion for a new trial in said cause, which motion is overruled and a new trial denied, to which ruling of the court the defendants by their attorneys here and now duly except.

Whereupon the defendants by their attorneys enter herein their motion in arrest of judgment which motion is overruled to which ruling of the Court the defendants by their attorneys here and now duly except.

And the said defendants being asked by the Court if they having anything to say why the sentence and judgment
39 of the Court should not now be pronounced upon them and showing no good and sufficient reasons why sentence and judgment should not now be pronounced

It Is Therefore Considered and Ordered by the Court and is the sentence and judgment of the Court upon the findings of guilty that the defendant Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'Oro, be confined and imprisoned in the United States Penitentiary at Leavenworth, Kansas, for and during a period of two years on each of counts 1, 2 and 3, sentence on count 2 to run consecutively with the sentence on count 1, and sentence on count 3, to run consecutively with the sentence on count 2, and sentence on counts 2 and 3 are suspended at the expiration of the sentence on count 1, and the defendant to be placed upon probation for a period of five years to William McGrath, and that the defendant Louise Rolfe, be confined and imprisoned in the Cook County Jail at Chicago, Illinois, for and during a period of four months and the defendants are remanded to the custody of the United States Marshal.

22 And afterwards, to wit, on the 28th day of May A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause "Stipulation of Agreed Facts", same being in the words and figures following, to wit:—

23 * * (Caption) * *

STIPULATION OF AGREED FACTS.

(1) It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record that the Government of the United States admits that Jack Gebardi, otherwise called Jack McGurn, was duly and legally married to Helen C. Demory on, to-wit, the 24th day of November, 1921 at Wheaton, Illinois.

(2) That the said Jack Gebardi, otherwise called Jack McGurn, was divorced from the said Helen C. Demory under the laws of the State of Illinois before the Honorable James J. Kelley in the Superior Court of Cook County, on, to-wit, the 2nd day of May A. D. 1931.

(3) It is further stipulated and agreed by and between the parties hereto, by their respective counsel of record that Louise Rolfe, defendant herein, was married to Harold A. Boex on, to-wit, September 23, 1922, at Waukegan, Illinois, and was divorced from the said Harold A. Boex under the laws of the State of Illinois before the Honorable John J. Sullivan in the Superior Court of Cook County, on, to-wit, June 21, 1928. It is further stipulated and agreed that the said defendant Louise Rolfe, is now of the age of Twenty-Five Years.

(4) It is further stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the said Jack Gebardi, otherwise called Jack McGurn, was legally married to the said Louise Rolfe, on the 3rd day of May, A. D. 1931, in the State of Illinois, at Waukegan, Illinois.

GEORGE E. Q. JOHNSON
United States District Attorney

HARRY F. HAMLIN
HOWARD H. MCCORMICK
Attorneys for Defendants.

40 And afterwards, to wit, on the 17th day of September A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to wit:—

41 * * (Caption) * *

Thursday, September 17th, A. D. 1931.

Present: Honorable Walter C. Lindley, Judge.

This day comes the defendant by his attorney and presents herein his Bill of Exceptions which Bill of Exceptions is approved and signed by the Court and

Ordered by the Court to be filed by the Clerk of this Court.

42 And afterwards, to wit, on the 17th day of September A. D. 1931 there was filed in the Clerks' Office of said Court in the above entitled cause a "Bill of Exceptions", same being in the words and figures following, to wit:—

43 * * (Caption) * *

ABSTRACT OF BILL OF EXCEPTIONS.

Filed Sep 17 1931.

44 * * (Caption) * *

Be It Remembered that heretofore, to-wit, on the 26th day of May, A. D. 1931, being one of the days of said term of said court, before the Honorable Walter C. Lindley, one of the Judges of said Court, without a jury, a jury having been waived by the respective parties, this cause came on for trial upon the indictment heretofore found herein, the defendants having entered pleas of not guilty.

Mr. Daniel Anderson appeared for the Government;

Messrs. Harry F. Hamlin and Howard H. McCormick, appeared for the defendants.

45 LOUIS E. COHEN, a witness for the government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 616 Rush Street. I am the owner of the McCormick Hotel which I have owned for four years in June, I believe. I have no records with me. I believe you have them. I see no one in the courtroom that resided at my Hotel.

G. T. MILLER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 6457 Eggleston Avenue. I was working at the Lexington Hotel in the fall of 1928 and living at the Lexington Hotel. There is some one in the courtroom who resided on the same floor as myself at that time. This person was a Miss Rolfe. She is there on my left. Indicating defendant Louise Rolfe). She occupied Room 854. She came to the Lexington Hotel in September 1928. She checked out about December 22, 1928. She was living alone as far as I know. I do not see anyone else in the courtroom who was living at the Hotel. I know a Jack McGurn who came to the Hotel a good deal. (Indicating defendant Jack Gebardi, otherwise known as Jack McGurn). He is seated just in the rear
46 of the lady, Miss Rolfe, here in the Courtroom. I knew him by the name of Jack McGurn. I saw him at the Hotel occasionally.

"Q. After December of 1928 do you know whether or not Louise Rolfe came back there?

A. Yes, sir.

Q. Do you recall about when it was, and how long she stayed?

A. May, 1929. I don't recall the exact date. In May some time.

The Court: May, 1929?

A. 1928, May.

Mr. Hamlin: If your Honor please that is after the date set forth in the indictment.

Mr. Anderson: This evidence is being offered for another purpose.

Mr. Hamlin: Then we ought to have the purpose.

Mr. McCormick: This was after the time of the indictment.

The Court: This indictment was filed on Nov. 21, 1929.

Mr. McCormick: Yes, the first count, and the third count of the indictment charges the offense beginning December, 1928 and January 25, 1929.

The Court: The indictment came to a conclusion before this date and charges certain overt acts about that time.

Mr. McCormick: This is 20592 that I have. It charges December 18, 1928, in the first count as the beginning of the conspiracy.

The Court: I am reading the second count.

Mr. McCormick: And in the second count, if the court please, they charge unlawful conspiracy on January 25, 1929.

The Court: They are not limited to that date.

Mr. McCormick: No, but in the third count they also charge January 25, 1929, and they do not go into any act beyond January of 1929. Now they are seeking to introduce some evidence in May of—

The Court: I don't think they are limited to any time prior to the time of the return of the indictment.

Mr. McCormick: Exception.

The Court: He may answer.

Mr. Anderson: Q. When Louise Rolfe, the defendant, was back in May, 1929, state whether or not you saw the defendant Jack McGurn there?

A. I don't recall.

Mr. Anderson: That is all. Cross examine.

Mr. Hamlin: No cross-examination.

FRANK E. McKENNA, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 22 E. 70th Street. I am a Hotel Clerk at the Lexington Hotel. This paper marked Government Exhibit 1 is a register sheet from the Lexington Hotel. I do not know who registered the party G. McManus. The sheet of paper shows that Room 854 was occupied by that party. The

party who occupied the room under that register is the lady sitting there. (Indicating defendant Louise Rolfe). This sheet of paper, marked Government Exhibit 2 is also a registration sheet from the Hotel register. Room 854 was assigned to Louis Nolan and wife. The lady occupied Room
47 854 but I don't know about the gentleman. I see the lady that occupied the room under the registration of Louise Nolan and wife. She is Miss Rolfe. The Registration of G. McManus on Government Exhibit 1, was ended September 13. I do not know the year. I am a Room Clerk and make assignments to the various guests when their registrations are accepted. These registrations were not made by me. (Referring to Government Exhibit 2). I took only the 4th, 5th, and 6th registrations. Maybe Mr. Housen took them. I think that registrations 3, 4 and 5 were made on May 2, 1929, which is the date of the sheet. Each sheet is dated for itself. It is the custom to open a new page for registrations every day and the date upon which the registrations are taken is put at the head of the page. I took no other registrations than those taken in the ordinary course of registrations. Government Exhibits 3, 4, 5 and 6 are ledger sheets—ledger accounts of guests. These ledger sheets make all entries on the ledger in regard to Room 854. Government Exhibit 7 is the last of these sheets. Miss Rolfe is the person that had that account. She is in the courtroom. She checked out on the 22nd of December, 1928. I made the record. This is the account of G. McManus—the account that is posted on the registration as G. McManus is shown as Government Exhibit 1. It was in the fall of 1928. The earliest date shown here is 10/12/28. Exhibits 8, 9 and 10 are ledger sheets. They show the account of A. L. Nolan and wife from Room 854 in the Lexington Hotel. I know Mrs. Rolfe is one of the parties that was charged in the account which is marked Mr. Nolan and wife. The account began 5/2/29. The last charge was September 21. I haven't got the year on the ledger sheet. The last two sheets are in my handwriting. (Meaning Government Exhibits 8, 9 and 10). Government Exhibits 8, 9 and 10 all refer to the registration of Nolan and wife as shown by Hotel Register Government Ex-
48 hibit 2 being May 2, 1929.

Cross-Examination by Mr. Hamlin.

I did not see the name Louis Nolan and wife written at the time it was written on Exhibit 2. I do not know whose

handwriting it is. I do not know whose handwriting the name McManus is in on Exhibit 1. Miss Rolfe occupied the room that is referred to in Government Exhibit 1, as being occupied by McManus. I am unable to state specifically any dates that Miss Rolfe was there in May 1929. I did see her there though. I do not recall seeing Miss Rolfe there on any dates during September which was the date of the register. I did see her though during the latter part of the year. She was stopping at the Hotel.

MRS. MARIE SIMMONS MILLER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I was living and working at the Lexington Hotel in the Fall of 1928 and in the Spring of 1929. I know a Louise Rolfe who occupied Room 854. (Indicated Defendant Louise Rolfe). I knew her under the name of Louise Rolfe. She went away in December and came back later. She returned later alone. I saw her very seldom during the Fall and Winter of 1928. No one else occupied Room 854. I did
49 not make up the bed but I had occasion to go into the room. My position at the Hotel was housekeeper. The maids worked under me. The room was used daily. No one but Louise Rolfe used it in the Fall of 1928.

LOUIS E. COHEN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am the same Mr. Cohen that testified before. Government Exhibit 11 marked for identification is a sheet of my register from the McCormick Hotel for the period of January the 18, 1928. Room 1109 was occupied by the registration of Mr. and Mrs. H. Johnson. It was first occupied January 18th. I do not know how long they occupied it. I do not see the Mr. Johnson in this courtroom, who occupied that room. I do not know Johnson. I did not take his registration. Mr. Johnson signed it himself. There are no indications that decide whether they paid in advance or anything of that na-

ture. I think it is monthly. I cannot tell from the check marks and the initials from the column just preceding 1109 who was the Clerk who received that registration. The party did not live in 1109 several months. I cannot tell from my records what room he lived in. I was not present when this registration was made. I do not remember having seen the man Johnson. I cannot place the woman Mrs. Johnson. I have no information as to who took the registration. I do not know the two people who are the defendants in this case. I saw the gentleman who is seated back of that lady. I do not know the woman and I don't remember seeing her.
50 I live at my own Hotel. I have never seen either of these people at my Hotel. I spend four or five hours a day at my Hotel and am active in the management. After the shooting match and newspaper publicity I found out it was Jack McGurn. I recognized his picture in the newspaper. That is I recognized McGurn as Johnson. I never saw Johnson around my Hotel. The Clerks told me McGurn lived there at the time as Johnson. I did not know who he was and I never saw him. My information came from Clerks. My records show that a Johnson in Room 1109 entered the Hotel. I do not know how long he lived there. My Auditor takes care of the ledger accounts for the guests. I do not know how it is done. Each guest has an account on that book. Harris is the Auditor. He has all my books. I see the lady in the courtroom who was living at the Hotel as Mrs. Johnson. That is the lady now known as Helen Ross. (Stipulated and agreed that this is the former divorced wife; that she was the wife of the defendant).

FRANK E. DUNDON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in Miami, Florida. I am a regular employee of the Post-office as a Mail Carrier. I was such in December, 1928 and January 1929. I see the defendants known as Jack Gebardi and Mrs. Gebardi, in the courtroom, that I took mail to. I do not remember under what names I received mail for them. It was an odd name. I did not know that it was
51 McGurn. I did not know them as Mr. and Mrs. I saw them at this address. Their address was at 453 North

West 3rd Street, Miami, Florida. I believe I delivered mail to them as long as three weeks.

The Court questioned the witness as follows:

Q. What was it, a house?

A. A private house.

Q. How large a house?

A. I would say possibly ten rooms.

Q. Was anybody else living there?

A. No, sir. I beg your pardon, there were four that occupned the house. Two ladies and two gentlemen.

I saw someone else besides the two defendants who occupied the house.

Cross-Examination by Mr. Hamlin.

I do not know that there were five or six different people in the house. When I came I rang the bell and they came to the door.

Redirect Examination by Mr. Anderson.

As a general rule, a lady known as Mrs. Gebardi came to the door to get the mail. I see her now. She is the lady at the table. (Indicating the defendant Louise Rolfe).

Recross Examination by Mr. Hamlin.

I do not remember what her name was or supposed to be at that time. I did not know it was Mrs. Gebardi. She was the lady that came to the door. I do not know that there
52 were any servants in the house. I do not know that there was a man or a woman in the house. I saw four people when I went there one morning. The lady known as Mrs. Gebardi came and got the mail that morning. I saw Mr. Gebardi. I saw him on the porch one time. I saw him driving about down in a Packard car many times. I saw that Packard car parked in the rear of the house twice. I saw two other people in the house, who, to my knowledge, stayed in the house. I do not know that there were six. I do not know that there were any servants.

WALTER HAUSEN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am employed at the Lexington Hotel. I was there in the Fall of 1928 and have been there since. The party G. McManus referred to on Exhibit 1, was assigned to Room 854. I registered the party. I see the party here in the courtroom. He is Mr. McGurn (Indicating the defendant (Jack McGurn). Someone called down from upstairs and asked for a room. I registered George McManus. All I know is that Mr. McGurn got the key for the room after I registered this McManus. I do not know who occupied that room. I have seen Louise Rolfe in the courtroom. I never spoke to her. She did not live at the Hotel to my knowledge. I only go above the first floor to my room which is on the 6th floor. I do not recall who registered Louis Nolan and Wife referred to in Exhibit 2. It is not my writing. Room 854 was as-
53 signed on the register. I do not know who got the key for that. I have seen Government Exhibits 2, 4, 5, 6, 7, 8, 9 and 10 before. They are from the Hotel. The records were made by the Clerk on duty. Some of them are mine. Exhibit 8 was made in connection with the registration of Exhibit 2 referring to Louis Nolan and wife. It is a ledger sheet in my own handwriting. I received the money paid on the account. The record does not show when the room was vacated. According to the ledger sheets the records run from the Second of May to the Thirty-first of May, 1929.

Cross-Examination by Mr. Hamlin.

Some one phoned down. I asked for the name. They said McManus. I registered that name. I do not know who called up.

HAROLD JOHNSON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at the Lexington Hotel. I am the Manager there. I have been Manager there three months. Exhibit A marked

for identification is dated Wednesday, September 12, 1928, bears the number 1319. Government Exhibit 3 bears the number 1321. It is the registration sheet for September 14, 1928. Registration sheet No. 1320 comes in between numbers 1319 and 1321. It would be dated September 13, 1928. It is labeled Exhibit 1.

Document marked GOVERNMENT EXHIBIT 1 received in evidence.

I had nothing to do with the registration of Louis No-
54 lan and wife. Government Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 are ledger sheets for Room 854 of the Hotel. Government Exhibits 3, 4, 5, 6 and 7 are for G. McManus. I do not know who that is. I have been out there for four years at the Hotel. I have seen pictures of Jack McGurn. I know him now. He is right in the courtroom. I have seen Louise Rolfe in the Hotel. I have seen Jack McGurn in the Hotel. I have occasion to know that they resided in the Hotel for one night of late but not in 1928.

Cross-Examination by Mr. Hamlin.

There are 361 rooms in the Lexington Hotel. Most of the rooms are not occupied every night. I have seen Jack McGurn and Louise Rolfe in and out of the Hotel in the last month or so. I do not know of Gebardi having been registered at the Lexington Hotel.

Redirect Examination by Mr. Anderson.

These ledger sheets are the regular records of the Hotels, showing accounts of the various guests. In this case the McManus is McGurn and wife.

Documents marked GOVERNMENT EXHIBITS 2 TO 10, inclusive, received in evidence.

Documents marked GOVERNMENT EXHIBITS 11 AND 12 received in evidence.

55 B. B. WHITE, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in Miami, Florida. In January 1929, I was a Motorcycle Officer on the Police Force. On January 25, 1929, I had

occasion to see the party that I see here to-day. I made a record in connection with the occasion. I saw the defendant Louise Rolfe. (Indicating defendant, Louise Rolfe). I was patrolling the county causeway between Miami Beach and Miami, Florida. Miss Rolfe started for Miami Beach. I heard a motor-car coming across the causeway, and as she got even with Palm Island I started the motor, followed her, and arrested her. At the time I booked her at the police station, she gave her name as Mrs. Louise McGurn, 453 North West 3rd Street. She gave her occupation as housewife. She said she was married. I saw her in the courtroom the next morning. In Court that morning I also saw the man at the table there. (Indicating defendant Jack McGurn). After the woman was booked, she used the telephone. I do not know who she called. In about fifteen or twenty minutes this man known as Jack McGurn came to the Police Station. A man, Parker Henderson, came, and said he would stand good for her appearance in Court. The next morning, when I went to court, I noticed Jack McGurn and Miss Rolfe sitting in the audience. When the case was called, Jack McGurn sat in his chair, she went up to the Judge and was fined.

McGurn got up from his chair, paid the fine, and they
56 walked out of the courtroom.

J. I. BROWN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am Desk Sargeant at Police Headquarters, Miami, Florida. On January 5, 1929, I saw a party whom I now see. (Indicating defendant Louise Rolfe). I made a record of the time she was brought in for speeding. She said her name was Louise McGurn. She said her address was 453 North West 3rd Street, Miami, Florida. She said her business was housewife. She said nothing else. I did not see her in the courtroom the next day.

Cross-Examination by Mr. Hamlin.

After reference to the records I remember seeing this of my own knowledge.

JAMES WARNES, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a House Officer at the Hotel LaSalle. I have records with reference to January 24, 1929. Government Exhibit 13 is a ledger sheet of January 24, 1929, registration sheet.
57 The Clerk who made the registration on line 6 of Government Exhibit 13, Mr. and Mrs. Vincent D'Oro, Havana, Cuba, is not here. I do not know who the Clerk was. Government Exhibit 14 is a Cashier's sheet from the Hotel. I did not have anything to do with the records. They were not made by me. The Cashier made the record in regard to Government Exhibit 14. Government Exhibit 15 is the Porter's baggage sheet. The Head Porter had charge of these records.

Cross-Examination by Mr. Hamlin.

My duties are those of a House Officer—a Detective. I have charge of investigations, seeing that order is observed.

Redirect Examination by Mr. Anderson.

I do not know who made the records in this book on the page dated January 25, 1929. The Head Porter has charge of these records.

EDWARD W. PETERSON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am Head Clerk of the Conductors' Bureau for the Illinois Central Railroad at 63rd Street. I have been employed by the Illinois Central for four years. Government Exhibits 16, 17 and 18 are three inner-line tickets sold from Chicago to Birmingham, Alabama, destination Jacksonville, Florida. They are dated January 25, 1929. I have no record
58 of what baggage went with them.

Cross-Examination by Mr. Hamlin.

The tickets were sold January 25, 1929. They are stamped on the back by the ticket agent. I did not sell them myself. They were sold at the Central Station, Chicago. I had nothing to do with the selling of them. All I know is that they are in the custody and posesssion of the Illinois Central Railroad. I know that baggage accompanied these tickets, because they are punched with the "B. C." punch, meaning baggage checked, which is a custom of the railroad.

Redirect Examination by Mr. Anderson.

I have charge of these tickets because I have charge of the tickets' bureau. I take only the conductors' end, the conductors' reports, ticket punches and dating stamps. I am custodian of the particular records of which we are now talking. I got the tickets at the 63rd Street office where we had them stored away. They are passenger tickets from Chicago to Birmingham over the Illinois Central Railroad, the final destination being Jacksonville, Florida. The stamps on the back are not made by me. It is the custom of the Illinois Central Agents to stamp tickets on the back with the date on which they are to be used. Punch "B. C." indicates the Baggagemaster's punch, which indicates that the baggage was checked on the tickets. The punch marks indicate that the tickets have been used between Chicago and Birmingham. The tickets
59 are returned to us for the cancellation and distribution between the different departments. As Head Clerk of the Conductors' Bureau, they come to me through the natural course of business. They are mailed to our office. I am in charge of the Conductors' Bureau to audit all passenger receipts to that office. Government Exhibits 19, 20 and 21 are a part of Government Exhibits 16, 17 and 18. They are parts of the same tickets originally sold.

Recross Examination by Mr. Hamlin.

The manner in which these tickets are cancelled and punched indicates that three persons were transported.

ANDREW STEVENS SATTON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 616 N. Dearborn Street. I believe I was living there in the Winter of 1928. I was employed at the McCormick Hotel. I do not know this woman here. (Indicating defendant Louise Rolfe). I can't recall having seen her in the Hotel. I was employed there about seven months. I recall a party by the name of Johnson, but I do not remember the first name. I don't recall the party Mr. & Mr. H. Johnson, Chicago, as shown on line 13, Government Exhibit 11. I
60 did not register these people myself. I know who those Johnsons were now. There is a gentleman here who is registered under the name of Johnson. (Indicating defendant Vincent Gebardi). That is the only name I knew him under. He was registered there as husband and wife and there was a child. I do not think I would recall the wife if I saw her. I only saw the lady three times. She was a brunette and I could not possibly state just who the lady was. I don't know how long they lived there.

ISIAH WILLIAMS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in Albany, Georgia. I am a conductor of the Atlantic Coast Line Railroad. I have seen Government Exhibits 19, 20, 21 and 22 before. My name does not appear upon them. I identified it as being a car that was on this train leaving here on the 25th day of January, 1929. I handled it between Albany, Georgia and Jacksonville, Florida. The only way I can identify that is that those tickets cover the same space that those Government Exhibits 19, 20 and 21 do. They refer to Lower 6 and Drawing Room B, Car 257. The purpose of this envelope in Government Exhibit 23 is to show that this transportation for this space has been lifted and enclosed in this envelope. Transportation covering the space Lower 6, and Room B, Car 257, which is in this envelope, has been
61 taken from the passengers. It is enclosed in Government Exhibit 22. I do not see passengers in the room that had

that transportation. I have no recollection because I took the train at 2:05 in the morning and delivered the train at Jacksonville, Florida at 7:10 in the morning. I received the Exhibits from the conductors that preceded me at Albany. I made the memorandum in pencil on the back of Government Exhibits 19, 20 and 21. It says "B 257", which means Car 257, B is the room, Lower 6 in 257. This refers to Government Exhibit 19 known as ticket A1754.

Cross-Examination by Mr. Hamlin.

I took the train January 27, 1929 about 2 o'clock in the morning.

BERTRAM QUELCH, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am Auditor of Passenger Roads with the Atlantic Coast Line Railway Company. I live in Wilmington, North Carolina. I have seen Government Exhibits 19, 20, 21, 22, and 23 before. I brought them to Chicago from Wilmington, North Carolina. They are in my custody. I heard the testimony of Conductor Williams, who testified as to certain records. He testified those were tickets on the Illinois Central Railroad for one space occupied in the car. Those records came back to me.

62 JOHN B. CAVANAUGH, a witness for the government, testified as follows:

Direct Examination by Mr. Anderson.

I am Head Porter of the Hotel LaSalle. I have been there since 1927. Government Exhibit 24 is a record of the baggage as it goes from the Hotel to the depot and the various other places it goes. It is also a record of the baggage and trunks from the depot to the Hotel. The records show the room number that the baggage comes out of. My assistant made this record. He is located at the Palmer House. His name is O'Leary. This is the record that we make daily. I check

it it over in the morning so that it is correct. I checked this entry and it is correct. I generally work from 8 o'clock to 6. At 6 o'clock I put a man in my place. He takes my place from 6 to 12. For all of the business that he transacts during the time he puts the money in an envelope and leaves me the money. I check the entire business of the day. The man that takes my place keeps a duplicate memorandum of each item. He keeps a record of the room number and railroad. He puts it down in this book. He checks every piece and there is a check number for each piece. We put a check number on each piece and we give the guest of the Hotel a duplicate. When I come back to replace the man who has taken my place, I check this book with a counter order that he has. This counter order is not Government Exhibit 13. The counter order is a book with a copying sheet in it and this one here is
63 the top one. We keep and turn this over to the Parmelee Company and the bottom one goes on the trunk. It is a tag tied on the trunk. The next morning I check the duplicates with the items in this book. The duplicates must correspond with this book. The counter orders are clipped together and put in the drawer. I do not have any actual knowledge of the actual transfer of the baggage except as made by the porter and by the counter orders that I find clipped together. I do not go up to the room and see that the baggage is actually taken out. Government Exhibit 15 is a record of the baggage of the day of each room, the time it leaves the room, where it goes to, the different places, and the boy that takes it out. The man behind the desk makes it out. The entries in the record of room 1113 are not in my writing. It is O'Leary's handwriting. Neary is the name of the boy that handled it and turned it over to O'Leary. O'Leary put them on the trunks and turned them over to Parmelee. I have seen Government Exhibit 25 before. It is a counter order that I found with the others. That one is room 1113. It is the one O'Leary made out. It is a part of my record. I would not have seen Government Exhibit 26 before. I check Government Exhibit 24 with Government Exhibit 25. Government Exhibit 25 proves the time the order was got from the room. The man that went up and got the baggage down, shows when the baggage came down, the time and the boy that brought it down. These orders are made in the regular course of business, part by myself and part by my assistant. This entry, "room 1113, I. C. Station" was made by O'Leary. The numbers of the baggage as shown in Government Exhibit

24 is 2938 and 2939. They are the Parmelee claim check
64 numbers. The numbers were put on by the man who takes the baggage from the room. That is the Hotel LaSalle man. Neary would be the man. Those numbers were put on the baggage. No other numbers were given that baggage by the Hotel LaSalle or while the Hotel LaSalle had charge of the baggage. It was turned over to the Parmelee Company with those numbers.

PETER ZACHARY, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a room clerk at the Stevens Hotel. I have been there about three and one-half years. I have no records with me. Mr. Abrams has the records.

WILLIAM A. SCHEEDER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a General Baggage Agent of the Parmelee Company. I have been with them for several years. I have been with the Parmelee Company for several years. I am not a driver. I would have no occasion to make records like Government Exhibit 25 and 26. The name of the driver is on that record. It is Brumett from the Hotel LaSalle to the I. C.

65 ROBERT BRUMETT, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a truck driver for the Parmelee Transfer Company and was such an January 25, 1929. I have seen Government Exhibits 25 and 26 before. I did not make Government Exhibit 25 out. I received it from the Parmelee Transfer Company. I saw it first when I got it in the morning. I saw Government Exhibit 26 when I first made it out. I made it out

from the check on the baggage. I first saw the baggage at the Hotel La Salle. I saw a duplicate of Government Exhibit 25. The Railroad has the duplicate. I was stationed at the Hotel LaSalle. I loaded this baggage on to the truck and took it to the depot at the Illinois Central. Baggage and check 2938 and 2939 was billed on a claim check of the Illinois Central so I took it over. The people keep the claim check. I do not have it. The claim check came from the Hotel La Salle. The Hotels have their own tickets,—that is, Parmelee Checks. The Porter makes out the checks and the counter orders and puts them on the baggage taken out. The driver picks it up and it tells where it goes. I turned it right over to the Illinois Central Railroad. I do not put any check on it. I leave a check on it that is on it when I pick it up at the Hotel LaSalle. Then when the owner wants to get his baggage he goes to the Railroad Station and presents his Hotel check to the baggagemaster. He then gets a railroad check in return for his Hotel check. The Exhibit shows that it was a ward-
66 robe trunk. Both wardrobe trunks. I saw the duplicate of Government Exhibit 25. I do not make it out myself. I received the duplicate only on the trunk. It was tied to the trunk with the claim check. It was not given to me at the time I took up the baggage. The checks are transferred to the Parmelee Company. The Hotel passes it over to the Parmelee Company. I do not know when. The Railroad gets the duplicate that is attached to the trunk. They keep the claim check. When the owner checks his baggage and surrenders his Hotel check, the Railroad keeps the duplicate and files it away.

EDWARD A. SMITTLE, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Baggage Agent of the Illinois Central Railroad at Wells Street. I have been there about a year. Government Exhibit 25 is an Advice Card. Government 26 is a Parmelee Baggage Bill. One of our Clerks made the record on Government Exhibit 27. The Clerk that made it is named Robert ward. Items 2838 and 2839 were made by Robert Ward. He is still working for us. This (Indicating) is the Parmelee bill that you receive. That is a Parmelee bill we receive. The

baggage—these are just notes. I made all of them myself. I had nothing to do with Government Exhibit 28. Our doorman received the baggage. I do not know what his name is. We receive Government Exhibit 28 from the Parmelee Company when we receive the baggage. I got it out of our
67 files to-day. It is made up by the Parmelee Company and when they deliver the baggage to us we receipt for it on this slip. Parmelee Company keeps the duplicate and we keep the original. I file it away as an employe of the Illinois Central Railroad. The records are in my custody. Government Exhibits 23 and 26 are duplicates of one another. The Railroad Company keeps the original and the Parmelee Company keeps the duplicate. Government Exhibit 28 is our copy. Government Exhibit 26 is the Parmelee Company's copy.

Cross-Examination by Mr. Hamlin.

I have been a Baggage Agent a year. I have been with the Illinois Central 29 years. I was formerly General Foreman and suburban conductor. I was a conductor for about 20 years. I was in the Baggage Department. I came back into the Baggage Department last summer.

Redirect Examination by Mr. Anderson.

I have not seen Government Exhibits 29 and 30 before. I have a record of the baggage coming out of the I. C. station and I brought them with me when going to the Stevens Hotel. Government Exhibit 31 is a record of the baggage coming off the train. I have a record of baggage numbers #584261 and #584262. The sheet is our receiving sheet where we bill baggage as we take it off the train. It does not show when the baggage arrived in Chicago. The baggage consisted of two wardrobe trunks. It does not show what was done with the baggage. Government Exhibit 32 is our delivery
68 sheet. I did not make them out; one of the men in the baggage room made them out. They were in the regular course of business. Two different men make the records in that sheet. I have been the head of the department a year. Mr. William was the head of the department before that. He is dead now. We use the same system now that we used at that time. These are a part of the files in my office. I am familiar with the regular course of business in the handling

of baggage. It has not been changed in recent years. These entries are made in the regular course of business. They show that they were delivered by the Parmelee Company to the Stevens Hotel. We stripped our checks off the baggage and put the Parmelee checks on them, and that is our receipt the Parmelee check. The Parmelee checks are numbered 93955 and 93956. At the time that was done I did not have occasion to see Government Exhibits 29 and 30. That baggage came off of what we call the Panama Limited Train Number 8, New Orleans. That train arrived January 31, 1929, between 9 and 9:30 A. M. Government Exhibit 33 is train baggage room—we bill our baggage to the Train Baggage men. With reference to 18325 and 18326, it shows it was billed out on the station. There was a record brought over with reference to the baggage that came from the LaSalle Hotel. This is delivered to the train (Indicating). Government Exhibit 33 was delivered to Train 9. It is known as the Seminole Limited. It was on January 25, 1929. I cannot tell from that sheet (Indicating), what number the baggage had when it came from the Parmelee Company. That checkman's sheet (Indicating) Government Exhibit 28 is the one that gives you the information. It is the long sheet I
69 had when I first got on the stand. 2938 and 2939 shows on the exchange sheet what checks they are exchanged for. Government Exhibit 27 is what we were talking about. #18525 and 18526 were the numbers given to items 2938 and 2939. That is the baggage that was put on the Seminole Limited. Robert Ward made the record on Government Exhibit 27.

OWEN MACKIN, a witness called on behalf of the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Owen Mackin and I am employed by the Parmelee Company. I have been employed there for ten years. I have seen Government Exhibits 29 and 30 before. I transferred this baggage from the Michigan Central depot to the Stevens Hotel. The number of that baggage when I got it from the Illinois Central was 93955 and 93956. I gave them those numbers. I got duplicate checks to take the baggage up when it came off the train. The other numbers were 584261

and 584262. There were two pieces of baggage. Those were the I. C. baggage numbers on that baggage. I gave these other two numbers to take the baggage back to the Hotel Stevens. The baggage was two wardrobe trunks. I used the railroad checks. I get them from headquarters at the Stevens Hotel. Then I sent down and surrendered the railroad checks, at the I. C., the I. C. checks, and delivered the baggage to me.

70 *Cross-Examination by Mr. Hamlin.*

I did not make these checks out myself. The Head Porter did at the Hotel LaSalle. I got the duplicate from the Head Porter. I have no personal knowledge of it except what I saw there and what somebody else gave me.

Redirect Examination by Mr. Anderson.

I wrote Government Exhibit 30. It is in my own handwriting. I did not do any writing on Government Exhibit 29. I got the duplicate of Government Exhibit 29 at the Stevens Hotel. Then I made out Government Exhibit 30. I hauled the trunks.

JAY ABRAMS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Jay Abrams. I am House Officer of the Stevens Hotel. I have register sheets from the Stevens Hotel, and also ledger sheets. Government Exhibit 34 is a register sheet of the Stevens Hotel. I did not have occasion to register any guests shown on that sheet. I did not have anything to do with Government Exhibits 35, 36, 37, 38 and 39. Mr. Zachary registered the guests shown on Government Exhibit 34. He is here now. The Bookkeepers made the record shown on Government Exhibits 35 to 39. None of them are here.
71 The Head Porter has charge of the baggage records. I have none of them with me.

PETER ZACHARY, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I was sworn a little while ago and stated that I was a Clerk of the Stevens Hotel. I registered the guests on Government Exhibit 34. I see them here in the courtroom now. They are over there (Indicating). They are a man and a woman. (Indicating the Defendants Mrs. Gebardi and Mr. Gebardi.) They registered under the name of Mr. & Mrs. J. Vincent D'Oro of Havana, Cuba. Mrs. Gebardi did the registering. They were at the Hotel approximately a month. I did not see Mr. Gebardi; I saw Mrs. Gebardi several times. They were assigned to Room 2313A when they first registered. At the time of Mrs. Gebardi's registering we did not have a select choice of rooms, and I made it a point to change them to a better suite of rooms; and I had occasion to change them to 1919A. I had only hotel business conversations with the defendants.

Cross-Examination by Mr. Hamlin.

Mrs. Gebardi was the one that registered. Mr. Gebardi was not there at the time. I suggested, as Mrs. Gebardi told me that she was going to remain a few days anyway, that I would give them a better room, if they would stay that long. One room was on the Lake side, and one was set back in the court. The first room I put them in had single beds.
72 The second room had a double bed. I did not see Mr. Gebardi with her in the room at any time.

Redirect Examination by Mr. Anderson.

At the time I knew her as Mrs. D'Oro.

WILLIAM M. CHILTON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is William M. Chilton. I live in Miami, Florida. I am a Room Clerk in the Dallas Park Hotel. I was such in

December—December 25, 1928. I had the original of Government Exhibit 40 yesterday. It was stolen last night from my room. My room is at the Allerton Hotel. I was looking at the original yesterday. Government Exhibit 40 is a true and exact copy of the original. I don't know what became of the original that I had yesterday. I brought it up here from Florida, from the Dallas Park Hotel. The ledger sheet of the account, and my subpoena were also stolen at the same time. I did not look thoroughly for them, I just looked a few minutes, but I looked all over, sufficient, I think, to say it was stolen. I looked in my dresser drawer, top dresser drawer where I put them last night. I made an inquiry at the office. I saw the signature of Mr. and Mrs. J. McGurn on Government 40, on the original. I saw it yesterday. The gentleman sitting there (indicating Defendant Vincent Gebardi), is the party who wrote that on the original. He is dressed
73 in a blue suit and red tie, sitting behind the lady in green. (Indicating the defendant, Louise Rolfe). I call him Vincent Gebardi. The lady came in about 2:30 in the afternoon, inquiring about apartments. I showed her an apartment on the 7th floor. We came downstairs and she said she would speak to her husband over in the car. She came back in and they decided to take the apartment. That is all the conversation. They resided at the Hotel from December 25th until the 31st, 1928. When they left they had baggage, but the bellboys handled it; I don't know anything about the baggage. The gentleman sitting there wrote the name Mr. and Mrs. Jack McGurn on the register. (Indicating defendant Jack Gebardi). The lady paid the bills. She paid the rent in advance, when she came in for a week; when she left, she paid the incidentals. One suite of rooms were occupied by Mr. and Mrs. Gebardi. There were twin beds. There was a bedroom, living room with an inner-door, spring and mattress bed, and dressing and bathroom and kitchen. It was supposed to be an apartment.

Cross-Examination by Mr. Hamlin.

It was a kitchenette apartment. I never saw Mr. Gebardi in the room with Mrs. Gebardi. I never saw him at any other time with her. I do not remember any time along about December 22nd or 23rd, Mr. Gebardi stopping at that hotel with some men. I did not know him being registered there during the month of December until the 25th. This is the lady that

paid the bills. The original of that of that document was stolen from my room in the Allerton Hotel. I don't know
74 it was stolen; it was misplaced. I have not been able to find it. I was there only a few minutes, I looked for it pretty thoroughly. It was not possible that I could have lost it; it was in the room last night. I am sure that McGurn signed that (Indicating registration).

Document marked GOVERNMENT EXHIBIT 40 received in evidence.

HENRIETTA WEBB, a witness called for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Henrietta Webb. I am a Cashier of the Hotel LaSalle. Government Exhibit 14 is my cash sheet of January 25th. 1113 means the room that was checked out. 1113 and the name there (Indicating) is written in my own handwriting. The name there is D'Oro. D'Oro occupied 1113 according to that record. It also shows the amount of his bill. The amount of the bill was $9.40. It was the LaSalle Hotel. I don't handle the Hotel register in that Hotel. I saw it from time to time. Government Exhibit 34 is not the sheet of the Hotel register of the Hotel LaSalle. Government Exhibit 13 is the sheet from the Hotel register of the Hotel LaSalle. Government Exhibit 14 shows the number of guests in room 1113. There were two.

Cross-Examination by Mr. Hamlin.

I am a Cashier at the Hotel LaSalle. All I have testified to is the information I have received in the usual course of business. I have no knowledge who occupied the room.
75 All I know about it bookkeeping and the amount collected.

Redirect Examination by Mr. Anderson.

Government Exhibit 14 is the sheet made in the regular course of business and taken out of my records.

HOWARD A. ROUNDS, a witness called for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Howard A. Rounds. I live in LaGrange, Illinois. My office is located at 64 W. Randolph Street, Chicago, Illinois. I am a handwriting expert. I have been practicing that profession for over twenty-five years. I graduated from the Union College of Penmanship in Ohio, in 1893, and then I taught penmanship in business colleges for three years, from there I went into an engraving office, where my work was the reading of manuscripts, writing resolutions, copy books, making out facsimile signatures, and it was there that I became interested in forged and disputed handwritings. I have made a special study of forged and disputed handwriting, and I had two years of the study of law, evening schools, and I was first called as a handwriting expert in 1906. I have examined and rendered opinions in 1800 cases; I have testified in approximately 700 cases; I was the handwriting expert for the Government in the great I. W. W. trial before Judge Landis in 1918; also for the Government in the Roundout train robbery case. I just recently testified for the
76 Government in the case of United States versus Malone, the Lawrence Avenue National Bank case. I made examinations and rendered opinions in approximately 70 cases since 1918, for the Government. I was the handwriting expert for the defense in the famous Leopold-Loeb-Frank murder case. I just testified in a case this morning. I think it is around 35 cases, something like that, during the year that I actually testified in. I have examined a photostatic copy of line 2 on Government Exhibit 34. I would say that the handwriting on line 6, page 86, of Government Exhibit 13, is the same as that on Government Exhibit 34. In the first place, the general style of handwriting is the same, in both instances. The capital letter "M" on both Exhibits are made in a very peculiar manner, especially the terminal strokes in each of the four "M's" is brought way below the base line; approximately the height of the letter above the line. Then the terminal line runs below the line that same distance. That is true on both exhibits. Each of the capital letters all the way through the "M's", the "D's" and the "O's" are all made in the same characteristic manner on the two exhibits.

The same letters, especially calling your attention to those in the word "Vincent", are made in characteristcally the same manner all the way through. The terminal "T's" are characteristically the same. In both of these signature is a character "&" and that character "&" is made in a very peculiar and unusual manner, and is made in the same way on both of the exhibits. The same letter "r" in "Mr." and the "r" and "s" in "Mrs." on both exhibits are made characteristically the same way, one as the other. I think that covers my reasons. I have had occasion to compare Government
77 Exhibit 40 with the other two. I would not say that the writing of all three is made by one and the same person.

Cross-Examination by Mr. Hamlin.

I usually get $50.00 for testify for the Government.

THOMAS GEEGAN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Thomas Geegan. I am in charge of the Baggage Department of the Stevens Hotel. I have been in charge of the baggage since they opened in 1927. Referring to Government Exhibit 41 the name I have written there is D'Oro. It is a daily record of incoming and outgoing baggage. I make the record myself. Two trunks came in according to that record, Parmelee Number 93955 and 93956. Yes, I have seen Government Exhibit 30 before. We file them away in the evening. We file the duplicate away. We destroy the copies after about a year. According to my record the baggage was two wardrobe trunks. After they got into our Hotel they went to Room 2313A. After that I think we sent it to the Lorain Hotel, if I am not mistaken. It was some time later.

Cross-Examination by Mr. Hamlin.

I have no personal knowledge of the accounts of these trunks myself. All I know is what my records recall to me. I don't know much about what others did.

78 JOSEPH I. NOLAN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Joseph I. Nolan. I am Ticket Agent for the Illinois Central, 12 Street Station. I have been Ticket Agent for the Illinois Central Station nine years. I have twenty-four men working under me. Government Exhibits 16, 17, 18, 19, 20 and 21, are portions of one-way tickets to Jacksonville, Florida. They were sold January 25, 1929. I know by the Ticket Clerk stamp on the back. It is the custom to stamp the tickets on the day that they are sold. The tickets have punch marks which would indicate baggage was checked, on each of the three. C. H. Schmidt sold the tickets. He is not with us any more. Each Ticket Seller has a separate dater, that can be identified. On the back of that ticket it says No. 19. That is the number of the Seller. He left about April 1929. I am familiar with Schmidt's handwriting. There are no handwritings on the tickets of his. I see handwriting that resembles his on Government Exhibit 42. From appearance I would say it was his. I am familiar with the writing of the different Ticket Sellers. He has written "292", Compartment B, and 1371 in Lower 6. 1371 refers to the number of the Pullman ticket that was issued to that space. 292 refers to the number of the compartment, the Pullman Ticket issued to cover that compartment. Exhibit 42 is a diagram that represents the Pullman car which went to Fort Myers, Florida, on the Seminole Limited, January, Leaving Chicago January 25, 1929. I could not say where the
79 passenger who occupied the Compartment and the Lower berth, were bound for. They paid to occupy the space as far as Jacksonville, Florida. I know from these Pullman Ticket numbers that the destination was Jacksonville, Florida. From my report of my ticket sales for that day, it shows 292 was the number of the compartment tickets to Jacksonville, Florida. I have not my records with me. The record will show that transportation No. 292 went to Jacksonville, Florida. It will show Pullman Ticket to Jacksonville, Florida, No. 292, was sold on January 25, 1929. I assume the Pullman reservation was purchased in my office. My record shows that, I state 292 was a Pullman Ticket to Jacksonville, Florida, a compartment sold—292 appears in this document here (In-

dicating). Lower 6 is the same—would be the same as Pullman Ticket for a compartment; Lower 6, Ticket 1371. I don't know who wrote at the bottom of that diagram. That diagram was made up at the City Ticket Office of the Illinois Central. That is on Jackson Boulevard, in the Insurance Exchange Building. It says there until just about the late afternoon each day and then is sent down to my office. As sales are made after it gets down to my office, the number of Pullman Ticket is inserted. 257 is a number we give a car going to a certain designation. We number the cars, the Pullman cars. 257 is the car from Chicago to Fort Myers, Florida on the Seminole each night; that is, the nights that they run. Government Exhibits 43 and 44 are Pullman Conductor records of this trip. I have nothing to do with these records.

80 *Cross-Examination by Mr. Hamlin.*

My record and the stamp on the ticket is the way I can tell when those tickets were actually sold. By looking at the tickets themselves. I can tell when the ticket was sold. I don't know whether these berths that I speak of and Pullman were actually occupied or not. All I know is that they are certain tickets that were sold and certain berths that were sold at that time. I don't know to whom they were sold.

W. F. BARNES, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is W. F. Barnes. I am Chief Clerk of the Pullman Company, audit. I have been Chief Clerk of the Pullman Company about twenty years. Exhibits 43 and 44 are the reports made up by the conductor at the end of each trip, showing the tickets and cards collected, in other words that is the Pullman Conductor's report to me for every trip, showing each ticket for each Section or Compartment, or Drawing Room. It says Compartment B is occupied, Chicago to Jacksonville by two passengers, $33.75; $22.50 Pullman collection, and $11.25 surcharge. They went out on Train 9, on January 25, 1929, on the Seminole Limited. Referring to Lower 6 in the same car, that record shows Lower 6 was occupied from

Chicago to Jacksonville by one passenger, the charge being $16.00 Pullman collection and $8.00 surcharge, January
81 25, 1929. It does not show the names of the individuals with reference to the occupants. The Conductor's diagram and Ticket Agent's diagram are there. Government Exhibit 45 is the Ticket Agent's diagram for Car 40, New Orleans to Chicago, on January 30th. It was on Train 8. Exhibit 46 is a Conductor's diagram for car, Glen River, destination No. 40, New Orleans to Chicago, January 30th, and 31st, that is leaving New Orleans 12:30 P. M. on January 30, 1929, on the Panama Limited. Government Exhibit 46 is the Conductor's diagram of car Glen River, New Orleans to Chicago, January 30th and 31st, 1929. We get it from the Conductors, from our Cashiers. The report is made out in the regular course and turned into our Receiving Cashier and the Receiving Cashier forwards it to our office. This is all made in the regular course of business. This is also true with reference to Government Exhibit 45, except it is made by the Ticket Agents. Government 45 was made in New Orleans. I don't have any idea who wrote in the words "D'Oro" for drawing room "A". I do not know when it was.

J. A. MAXWELL, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is J. A. Maxwell. I am a Railroad Conductor and was such on January 25th and 26th, 1929. I have not seen Government Exhibits 19, 20 and 21. I am the conductor out of Cairo, Illinois. I am south of Cairo.

82 F. A. BONSKEY, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is F. A. Bronskey. I am General Baggage Mail Agent at Jacksonville, Florida for the Terminal, Jacksonville Terminal. The baggage that left Chicago as 18525 and 18526, arrived at Jacksonville over the Seminole Limited, train 93, arriving at Jacksonville, to St. Augustine, and went out of

St. Augustine as 347912-13 on January 27, 1929, over the Florida East Coast Line Road. The baggage was two wardrobe trunks received over the Seminole Limited.

ROBERT WARD, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Robert Ward. I am Checking Man at the Illinois Central Railroad. Government Exhibits 31 and 32 are a record of baggage both coming in and going out. Government Exhibit 27 is baggage going out. Referring to Items 2938 and 2939, I made those records. I show there the checking of baggage, also Pullman number of tickets and where they went. They went to Jacksonville, Florida. I made those in the ordinary course of business. They represent baggage checked to destination. I received it from the Parmelee Company, and I checked it to Jacksonville, Florida. The two items on the record read as follows: "Pullman number,
83 ticket 1752-3 and also the form number 223-33, then the Parmelee check, 2938-9, and checked to Jacksonville, Florida. Two numbers, 2938 and 2939 are checked to Jacksonville, Florida, under 18325-26. That does not indicate what sort of baggage it was. That is just the billing of them. When I wrote on that sheet, the form, the number of ticket, I saw the ticket. Government Exhibits 18, 19, 20, and 21 are part of the tickets that I saw when I wrote this part: A1752, A1753 and A1754. I punched these tickets to show the baggage was checked on them. As far as I can remember Government Exhibits 16, 17 and 18 which bear the numbers: A1752, A1753, and A1754, were attached to Exhibits 19, 20 and 21. Exhibits 15, 16 and 17, show that baggage was checked. I think I did that punching in there. Referring to Government Exhibits 31 and 32, I do not see that they show anything with reference to the same baggage. I only check baggage out. Government Exhibit 31 must be a record of the baggage coming in from all over, according to the trains. I did not make line 7 and 8 in Government Exhibit 31.

HERBERT RICHARD SMITH, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

My name is Herbert Smith. I am Assistant Manager of the Stevens Hotel. I had charge of the cashiers in February, 1929. Government Exhibits 35, 36, 37, 38 and 39 are ledger sheets of the account of Mr. and Mrs. D'Oro. The name
84 of the account is D'Oro, Room 1919A. The bill was charged to that account from the 31st of January to the 27th of February, 1929. I do not know what the bill was. The amount of the bill is—the last amount is $27.50. Each bill was rendered weekly and paid weekly. Each page represents a week. The final bill was $27.50, that was the last three days of his occupancy. That was the amount due at the time the bill was closed out. According to this sheet, the final balance was not paid on this sheet. I don't know who collected upon this bill. This record does not show. Some of them show who collected. It does not show on this one. This one shows that this (indicating) $103.65 was collected by one of our cashiers. The name of the Cashier is Gaston. I don't remember the first name. It is Miss Gaston. She is still with us. She also collected this one. (Indicating) It was $80.70. $129.56 was collected on Government Exhibit 38. Miss Gaston collected that. It shows on this sheet that Government Exhibits 37 and 39 were collected. Miss Gaston made all the collections according to the records. We have bookkeepers post each account. All entries are made by many bookkeepers, and they are all under my supervision. I am with them most of the day, when I am on duty. I made some of these collections myself.

LOUIS COHEN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

Referring to line 13 on Government Exhibit 47, Mrs.
85 Johnson is the only one in the courtroom whom I remember having seen. I knew the defendant, McGurn, as her husband. (Indicating defendant Vincent Gebardi). I

didn't know him except through the newspapers. They registered on January 28th, 1928. My bookkeeper kept a record as to how long they lived there at the Hotel. The records are correct in reference to the dates when Mrs. Johnson left the Hotel, and when they entered. They entered the Hotel January 18th, 1928 and left March 28th, 1928. Government Exhibit 52 is a check-out card; one of my clerks made it. I think his name is Zimmerman. He is no longer with us. The bookkeeper is in charge of the files.

Cross-Examination by Mr. Hamlin.

I believe the shooting in the cigar shop happened at the time they lived in the Hotel. I don't remember the date. I have never seen the lady, Mrs. Gebardi. According to the records these people came in on the 18th of January and went out on March 18th, 1928. I don't remember seeing Mr. Gebardi there at any time. This lady, Mrs. Dimori, had a small child there—a little girl.

Further examination by the Court.

I saw a picture of Gebardi in the paper purporting to be a picture of Jack McGurn. After the Clerk told me he left there I remembered seeing him coming in and out of the Hotel, from this picture. I saw him come in and out of the front door. I didn't see him in the lobby. I don't know where he went when he got inside of the Hotel. The shooting occurred in the smoke shop in the Hotel building—that is
86 the cigar store. I saw him possibly a week or a month before the shooting, coming in and out of the Hotel. I didn't know who he was at the time that I saw him. Then, when I saw the picture in the paper, following the disturbance there, I recalled that the picture was the same man I had seen coming in and out of the Hotel. I was called before the Grand Jury. I think I made the answer: "I know a fellow by the name of Johnson", when asked before the Grand Jury, "Do you know a fellow by the name—commonly called Jack McGurn?" To the question, "Is he the one you now know as Jack McGurn?" I think I answered: "I later found that out." To the question: "Is he the fellow that was shot while at your Hotel?" I answered: "He was not shot in the Hotel. He was shot in the cigar store adjoining

the Hotel. We have no connection with the so-called smoke shop at all. I leased it to a fellow called Eulo." I recall answering the question: "How long did this Jack McGurn, otherwise known as Johnson, live at the McCormick Hotel?" with the answer: "Lived there about five months. I am not sure, but it might be about four or five months." To the question: "Do you remember when it was—about the time?" I answered: No, I shall find the Hotel sheet which shows it. He had a little girl and a wife at that time." I also answered: "They checked in as Mr. and Mrs. Johnson." To the question: "How old would you say the child was?" I answered: "Apparently, oh, at that time, probably five, six, or seven years old." When shown a picture of one, Jack McGurn, and asked, "Is this the man, Jack McGurn, the 87 one whom you knew as Johnson", I possibly answered: "Yes, sir." I don't remember that Government Exhibit 52 is the picture that was shown to me at that time. Room 906 is a two-room kitchenette apartment.

PHILIP HARRIS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am employed for myself. I have been employed by the McCormick Hotel at times. I am the General Auditor there. I have seen Government Exhibits 48, 49, 50, 51 and 52 before. I verified the corrections and charges to see whether they are right or wrong in reference to these Exhibits. I did this at the McCormick Hotel. They are a part of the records there. Government Exhibit 52 is a card that a clerk makes out and files when a guest registers. When the guest checks out the card is given to the bookkeeper. It is kept with the records of the Hotel.

Cross-Examination by Mr. Hamlin.

I am only the auditor. I do not have anything to do with the preparation of these papers. I merely check them over. I check them with the register and verify the charges to see that they are correct. The bookkeeper they had at that time made the records on Government Exhibits 48, 49 and 50. I do not remember who it was. Zimmerman signed this check-

out (referring to Exhibit 2). He is dead. This card
88 shows arrived on January 18th. The departure shows
21. Shows that he paid. He evidently paid to the date March 21. I cannot testify Zimmerman's handwriting. This card was taken out of the receptacle in which it was contained at the time of checking up. The stamp on back of the card shows that the card was given to the bookkeeper as checking out at ten o'clock, March 21st, 1928. Figures $175 is the monthly rate. The figure $115 shows that he first started in a smaller apartment. He started in Room 1109 and the rent there was $115. They were then transferred to a different apartment at $175. The card refers to two people occupying a room.

(Documents marked GOVERNMENT EXHIBITS 48, 49, 50, 51 and 52 received in evidence.)

I do not know who Mr. and Mrs. Johnson were. I do not know any of the guests.

THOMAS O'LEARY, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 4340 Berkeley Avenue. I was employed at the Hotel LaSalle in January 1929. I have seen Government Exhibit 24 before. The item checked with a cross, the second item from the bottom, is in my handwriting. I cannot read it, it is blurred. It looks like 1113 or 1143 to I. C. I can see 2938 and 2939, figure 2. The figure 2 means two pieces going to the I. C. As far as I can see they were numbered 2938 and 39. The "O" signifies that I collected the money, and that means $1.80 to the Parmelee Transfer Company—a charge of
$1.80 by the Parmelee Company. It looks like North-
89 western written above the ditto marks, but I cannot make
that out. Parmelee hauls all the outgoing baggage from our Hotel. Those records are made by myself. The records were made January 25th, 1929.

(Document marked GOVERNMENT EXHIBIT 24 received in evidence.)

Cross-Examination by Mr. Hamlin.

I am Assistant Porter at the Hotel. I wrote in this book because it was a record we kept for the Hotel Porter, for the

Parmelee Company. I just make out the checks for the baggage. I could not say where I got the information to put on the check. All I know is that I put these in the book on that date. It is our regular record for all out-going baggage. I cannot say that I collected the money myself for the baggage.

Redirect Examination by Mr. Anderson.

Government Exhibit 25 is in my handwriting. 1113 is the check number. When I saw Government Exhibits 25 and 26 I saw them at the time I made the record known as Government Exhibit 40. The baggage was received at the I. C. Depot. Government Exhibit 26 is the receipt that the Parmelee Company got for the baggage.

(Document marked GOVERNMENT EXHIBIT 25 is received in evidence.)

BERNICE GASTON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am employed at the Stevens Hotel. I have been
90 employed at the Stevens Hotel for the last four years. I have seen Government Exhibit 35, 36, 37, 38, and 39 before. I checked the account as shown by Exhibit 35 out of the Hotel. It was given to me by the House Officer of the Hotel. It is in my handwriting. I wrote C F S, J A, which is the House Officer, on February 27th, 1929. Government Exhibit 36 is the same account. I received the weekly bills because my cash initial is on them (indicating). Government Exhibit 37 is a part of Government Exhibit 38. I initialled that also. Government Exhibit 39 is also my work. Government Exhibit 37, 38 and 39 are weekly bills—a record of weekly bills. They are made out in the regular course of business, weekly. The bill is made out to Room 1919A and charged to that account at the Stevens Hotel.

Cross-Examination by Mr. Hamlin.

I did not derive the information entered on those sheets from reports from other departments in the Hotel. I took

the money. I was the Cashier. All I did was to take the money from the customer. The bookkeeper made these entries.

The Court: What do you mean, that the bill was made out?

A. Yes, sir.

Q. Somebody came to the window to pay the bill?

A. Yes, sir.

Q. You got these particular bills?

A. Yes, sir.

Q. Presented them, told the person who was paying the bill the amount due, received the money from that person—

A. Yes, sir.

Q. And credited it upon the bill?

A. Yes, sir.

91 *Redirect Examination by Mr. Anderson.*

This lady, (indicating) in the courtroom, paid the bill. I see her now, she is right over there (indicating defendant, Louise Rolfe, or Mrs. Gebardi) Her name was not Gebardi, her name was D'Oro—Mrs. D'Oro. I do not see anyone else in the courtroom who was living at the Hotel in connection with that account. She was alone. The bill showed two parties lived in the room. I do not have personal knowledge as to how many were charged with that room outside of what the bills show. I believe the Floor Clerk or Porter would have custody of the records of which this is a part.

(Documents marked GOVERNMENT EXHIBITS 35, 36, 37, 38 and 39 were received in evidence.)

PETER ZACHARY, a witness for the Government, testified as follows:

Direct Examination (continued) by Mr. Anderson.

Government Exhibit 55 is in my handwriting. It was made the day the guests arrived. It was made the day Mr. and Mrs. D'Oro arrived, January 31st, 1929. I see the parties in the courtroom. I see one of the parties to whom I assigned the room. I made Government Exhibit 55 out on the registration of the guests at the Hotel for a record for the Hotel. The registration indicates that they were changed from one room to another. The change was made the same

day. 2313A registration continued the entire day. I have no records of how long the last registration continued.
92 According to Government Exhibit 55, which is in my handwriting, they arrived January 31st, 1929, at 10:44 in the morning. That is—on reading the time stamped on the back of the registration. Government Exhibit 54 was made out by the Floor Clerk. The Head Porter has charge of those records. At the time that I wrote it (referring to Government Exhibit 55), the day Mrs. Gebardi registered, I was present.

(Document marked GOVERNMENT EXHIBIT 55 received in evidence.)

RICHARD H. STRAUGHAN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Baggage Clerk of the L. & N. Railroad, Biloxi, Mississippi. Government Exhibit 56 is an in-bound Train Baggage Report received by the Baggagemaster at Biloxi, who received the baggage from the train. This came in on Train 5, according to the records, January 28, 1929, about 4 P. M., over the L. & N. Railroad. This train comes from Montgomery. The baggage was received at Flomaton, Alabama. At Flomaton the Pensacola Division comes in from the east. Check No. 162021 shows the baggage to be two wardrobe trunks. The Florida East Coast Railroad issued the checks. They were received at the L. & N. Station, Biloxi, Mississippi, by Train Baggageman Bellande, who received them from Flomaton, Alabama. I received this record from the Train Baggageman on Train No. 5 January 28th, 1929. He delivered it to me with the baggage. Government Exhibit 56 is a part of the records at Biloxi. I do not know
93 whether or not there are three tickets. I do not remember how many tickets covered this baggage. All I remember is from the records.

(Document marked GOVERNMENT EXHIBIT 56 received in evidence.)

I could not say what happened to the baggage.

WILLIAM A. MEGLEMRY, a witness for the government, testified as follows:

Direct Examination by Mr. Anderson.

I am Auditor of Passenger Accounts of the L. & N. Railroad Company. I have been Auditor for about eleven years. Government Exhibit 57 is Train Baggage Way-Bill of the Seaboard Air Line, L. & N., at River Junction. The writing on these two lines (indicating) is: 9:5, is St. Augustine to Biloxi, Mississippi, check number 1620-21, wardrobe trunk. I received Government Exhibit 57 from the General Baggage Agent. I brought Government Exhibits 57 to 62, inclusive, here because you subpoenaed me to bring the records of our Company. I got them in the office of the General Baggage Agent who has charge of the traffic end. They are filed away in that office as they are sent in by the Train Baggagemen or Agents. I have no personal knowledge of these entries, but they are a part of the records of the Railroad Company received in the usual course of business.

(Documents marked GOVERNMENT EXHIBITS 57 to 62, inclusive, offered and received in evidence.)

The first line also shows that the baggage was stacked in the baggage car and delivered at the River Junction of
94 the L. & N. Railroad. On the line below it shows baggage from St. Augustine to Biloxi, Mississippi, and under that 162022, wardrobe trunk, stacked, delivered to the L. & N. at River Junction. Government Exhibit 58 refers to the same baggage. Check No. 162021 shows the following: Florida East Coast, destination, Biloxi, Mississippi; received at Station K 8:12, description "W.R.T.", which is wardrobe trunk, stacked. The record I am reading from is L. & N. baggage movement, showing baggage delivered to Train Depot Man, Train No. 6 Pensacola. Government Exhibit 57 is Seaboard Air Line Baggageman's Report, baggage delivered River Junction on Train No. 39. The date of the delivery is out of Jacksonville at 7 P. M., January 27th, 1929, arriving at River Junction 5 A. M., January 28th, 1929. Government Exhibit 58 shows that the package was handled on Train No. 4, January 28th, 1929 on the L. & N. Railroad. It does not show the particular hour. Government Exhibit 59 is the duplicate of the one just read. It is used as part of the original, as receipt of the same Baggageman. to whom

the baggage was delivered to Train Baggageman No. 6, named LaRue, at different divisions. Exhibit 60 shows baggage No. 162021 and 162022 as being delivered Pensacola to Train Baggageman LaRue, Train No. 6, January 28th, 1929, delivered to M. & M. Train No. 5, which is on the L. & N. Railroad. It shows the destination of it there to be Biloxi, Mississippi, from the Florida East Coast Railroad. It does not state the time. Government Exhibit 61 is a duplicate of the one just read, which was receipt of the baggage agent delivery on Train No. 5, at Fullerton, Alabama, destination point Pensacola. Exhibit 62 is a Train Baggageman's Report of Train No. 5, January 28th, 1929, from Montgomery, Alabama to New Orleans, Louisiana, baggage
95 delivered to Biloxi. It does not show the hour.

Cross-Examination by Mr. Hamlin.

The L. & N. Railroad does not go into St. Augustine, Florida. It does go into Pensacola. I know nothing about transportation of trunks out of St. Augustine except what the records show. I know from an examination of these tickets that there were railroad tickets in connection with them. I cannot identify the railroad tickets from these papers. I canont tell the number of tickets that were used to transport these trunks. I do not know how many people accompanied the trunks.

J. I. NOLAN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

Government Exhibits 63, 64, and 65 are stubs of tickets that you now have in your hand. Exhibits 63, 64 and 65 are kept in the office after the tickets have been delivered to the passengers—that is my office, the ticket office. I am the City Ticket Agent at the Illinois Central Station. I brought them from that office. They are part of the same ticket.

C. H. SCHMIDT, JR., a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live at 11452 Wentworth Avenue, Chicago, Illinois. I have lived there 26 years. I was in Chicago last month.
96 I left the employment of the Illinois Central Railroad April 24th, 1929. I worked for the Illinois Central on January 25th, 1929, as a Ticket Clerk, at the 12th Street Station, Chicago. My duties were selling tickets. I can tell that I have seen Government Exhibits 16, 17, 18, 19, 20, 21, 63, 64, and 65 before, because of my writing upon them. On Government Exhibits 63, 64, and 65 I wrote the number 3896 on each one of them. That portion of the ticket, after the ticket is sold, is turned into the account in the office in Chicago. That is my writing on Government Exhibit 42. I have no way of telling what day the tickets were sold. Government Exhibit 42 is dated January 25th, 1929. I also wrote on Government Exhibit 42 the number 292. I wrote that number after Compartment B on Car 257 on the Illinois Central Railroad. That train is known as the Seminole, Limited. To my knowledge the only reservation made in Car 257 was Compartment B for these three tickets. That is not my handwriting after Lower 6. I don't know whose handwriting the word LaSalle written under No. 292 is. 292 refers to the ticket number on the Pullman Ticket.

Cross-Examination by Mr. Hamlin.

I believe I sold those tickets personally. I do not know to whom I sold them. I sold them some time before January 25th, or on January 25th. It might have been a month before.

Redirect Examination by Mr. Anderson.

The reservation of Compartment B did not necessarily go with these railroad tickets.

97 *Recross Examination by Mr. Anderson.*

I do not know, from my own knowledge, how many compartments were sold by the Pullman Company for these particular tickets. I can only tell from the record.

C. D. TODTENBIER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am City Ticket Agent of the Illinois Central System, at Gulfport, Mississippi. I have been there approximately five years. I was City Ticket Agent on January 30th, 1929. At that time tickets were sold in the name of D'Oro, but I did not sell them. We sent a man to the Edgewater Gulf Hotel. I have a record of the telephone call Edgewater Gulf Hotel for the reeservation for D'Oro. The record of Government Exhibit 66 was made from the 27th of January through to the 30th of January, 1929. The item on the 11th line is a call that came from the Edgewater Gulf Hotel at 4:05 P. M., on the 29th of January, 1929, for a drawing-room. I made the memorandum myself.

(Document marked GOVERNMENT EXHIBIT 66 received in evidence.)

It is a request for a reservation of one drawing room, Gulfport, Mississippi to Chicago, Illinois, on the Panama Limited, on the 30th of January, 1929, in the name of D'Oro. Records on Government Exhibits 67 and 68 were made by myself on the 29th of January, 1929. They were made in connection with the telephone call for reservation of a drawing room referred to above. They were made as a part of my duties from day to day, in the regular course of
98 business. At the time the record of a call for accommodations was made we did not have the drawing-room space. In a case of that kind we do the next best thing and get a drawing-room from the junction point. Now, at 4:55 P. M. on the 29th of January, 1929, I called the New Orleans City Ticket Office on the Railroad Company's telephone. I asked for a drawing-room on the Panama Limited from Jackson, Mississippi to Chicago. They gave me Drawing-Room A in Car 40. In order to take the passengers in a Pullman from Gulfport to Jackson, which is the junction point, we assigned them three seats in Section 4 in Car 6, January 30th, Gulfport, Mississippi to Jackson, Mississippi. The tickets were sold by a man named Anderson. He was under me and took the tickets to the Edgewater Gulf Hotel. I made the records that I have here. I talked only to the Hotel Company besides the man who worked under me, Anderson. I do not

know who I talked to at the Hotel over the telephone. Government Exhibit 69 are the tickets for transportation. On January 30th, all of the tickets in this entry were sold. I sold nine tickets from Gulfport to Chicago. Most of this business was done with the Edgewater Gulf Hotel. There were three extra fare tickets that were sold. These extra fare tickets were E. F. P. 10, E. F. Extra 708-9, 707-8-9, which were sold for the Panama Limited to go out on the 30th of January, 1929. This was a solid Pullman train and there were Pullman reservations for this ticket. This is the same train that had the drawing-room that I previously referred to. Gulfport is not on the main line and if we do not have a drawing-room connection, the connection is made at Jackson. I have not seen Government Exhibit 45 before. It is a diagram for a Drawing-Room Compartment, Pullman car, from New Orleans to Chicago, Illinois, Panama Limited
99 for Car 40. Government Exhibit 70 is a diagram of Car 6 on the Panama Limited from Gulfport, Mississippi to Chicago, Illinois, on the 30th of January (Wednesday), 1929. I put certain numbers of the card. I made a reservation on that card with reference to the three tickets which were sold. They are shown in Section 4, 1441, and they are marked to Jackson—three seats to Jackson, only, which I wrote in my own handwriting. The Edgewater Gulf Hotel ordered the tickets.

(Document marked GOVERNMENT EXHIBIT 70 received in evidence.)

J. H. MATTHEWS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Depot Ticket Agent at Gulfport, Mississippi, for the Louisville & Nashville and Illinois Central, and was such on January 28th, 1929. Government Exhibit 71 came to us from the Edgewater Hotel, attached to the baggage that came to Gulfport—that is, to the Illinois Central Depot at Gulfport. It was attached to one of the trunks. The numbers mean,—1 ticket, 707; 1 ticket, 708; and 1 ticket, 709. The number 584261 is the number of the baggage check attached to baggage. 584261, 584262 and 584263 are also pieces of baggage. I cannot tell what kind of baggage. They came

from the Edgewater Gulf Hotel on January 30th, 1929. Government Exhibit 72 is a duplicate copy of the way-bill which we made for the Train Baggage Man. The Depot Clerk at Gulfport made it. The records are kept in my custody and come into my possession in the regular course of busi-
100 ness. They are filed away at Gulfport. (Document marked GOVERNMENT EXHIBIT 72 received in evidence.) The number 584262 shows the forwarding of a piece of baggage from Gulfport to Chicago. 584261 shows the same thing. It does not show the kind of baggage. It was forwarded January 30th, 1929 on Train 108, which is the Panama Limited. The train leaves there about 12:10 P. M.

VINCENT E. LACHNER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a truck driver for the Biloxi Transfer & Storage Company, Biloxi, Mississippi. Government Exhibit 73 is a baggage receipt received from the Edgewater Gulf Hotel, from the Head Porter. When I came up here I got it from the Biloxi Transfer & Storage Company. I have not had it in my possession until I got it a few days ago. I received it myself from the Edgewater Gulf Hotel on January 28th, 1929. I received it because I delivered the baggage ~~from~~ TO the Edgewater Gulf Hotel ~~to~~ the L. & N. Depot at Biloxi, Mississippi. FROM

(Document marked GOVERNMENT EXHIBIT 73 received in evidence) 162021 was the number on one trunk, 162022 was the number on another trunk. The Edgewater Gulf Hotel wrote that number. I checked the numbers of the trunks. I do not know what kind of trunks they were. I do not know whose baggage it was.

HAROLD J. PHILLIPS, a Witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Baggage Porter for the Edgewater Gulf Hotel and was such on January 30th, 1929. The writing on the
101 third line from the bottom is the Head Porter's, and I signed my name. I signed my name when I delivered

the trunk. I made my signature in connection with a check going in at the desk. I received the baggage. I took the baggage up to the rooms of the Edgewater Gulf Hotel, Biloxi. I got the baggage from the back platform of the Hotel. Government Exhibit 74 is a record of trunks coming in—Hotel arrivals. It was made at the time of the arrival. The record known as line 3 from the bottom was made at the time that those trunks arrived. I signed it on that day. (Document marked GOVERNMENT EXHIBIT 74 received in evidence.)

I do not remember the guests that received the baggage. They were not in the room at the time that I brought them up. I did not see them in the room after that. The baggage consisted of two wardrobe trunks. I see no one in the courtroom that I saw in the Hotel at that time or right after that.

Cross-Examination by Mr. Hamlin.

I now work at the Roosevelt Hotel in New Orleans. I have no recollection of these trunks except what the paper recalls to my mind. I took the trunks to Room 616. I do not know whether it was a connected room or not.

J. PHILLIPS, a Witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am Head Porter at the Roosevelt Hotel, New Orleans. In January, 1929, I was at the Edgewater Gulf Hotel, at Mississippi Park, Mississippi, which is near Biloxi. I saw that gentleman (indicating defendant Vincent Gebardi) there in January, 1929. I checked some baggage for him. I
102 saw him twice when he ordered these tickets and then when I checked his baggage and gave him the tickets. He ordered the tickets the day before he left. He left January 30th. Government Exhibit 74 is the Biloxi trunk record. I wrote Government Exhibit 71. I wrote the date correctly at the time I wrote it. The date was January 30th, 1929. I made it out because I have to make out one every time I check a piece of baggage. I checked three pieces of baggage in connection with the making out of that advice

card. I see a person with whom I had conneection in making out that Exhibit; that is Mr. D'Oro (indicating defendant Vincent Gebardi). I did it in order to check his baggage from the Hotel to Chicago. He asked me to check two pieces of baggage to Chicago and I did. I purchased two tickets for him. He requested me to do this. He asked me to buy the ticket for a drawing-room to Chicago. He requested me to buy three tickets, drawing-room to Chicago. I was requested to do this at my desk in the Edgewater Gulf Hotel, Edgewater Park, Mississippi. I phoned the order into the Illinois Central Railroad for the tickets in the Pullman space, a drawing-room, three tickets, and tickets on extra fare. They were purchased for the Panama Limited on January 29th to leave on the 30th. The tickets were brought to me by a baggage agent named Anderson, who made the tickets out right at my desk. He is dead now. Anderson and I were alone. The tickets were charged to the Hotel account. I have no recollection of what space I received. I charged the tickets to D'Oro, Room 616. I gave the tickets to Mr. D'Oro. The Hotel office took the charge in. I turned three tickets over to Mr. D'Oro.

(Document marked GOVERNMENT EXHIBIT 71 received in evidence) I wrote the numbers 584261 and 62. My assistant wrote 63. When the porter went up for the 103 trunks he was given another piece of baggage, and I had to check that. The extra piece of baggage was a smaller trunk. I did not see D'Oro at the Hotel at any time except the times I have mentioned. I don't recall seeing Mrs. D'Oro.

Cross-Examination by Mr. Hamlin.

I was first employed at the Edgewater Gulf Hotel April 25th, 1928. I worked there until they closed, the first of May. There were about 400 rooms in the Hotel. I did not live in the Hotel, I lived in a dormitory connected with the Hotel. I only have occasionally come in contact with the baggage tickets. I remember Mr. Gebardi by seeing him in the Hotel at times. I do not remember every person that I check baggage for. I remember him from the records. At the time he was stopping at the Hotel, Mr. Burns had wired to get his credit reference, and naturally he always told us about the people that he did not get a fair reply from, and we naturally remembered those people more than we would ordinary guests. I do remember him as the person who ac-

tually checked the baggage. The request for the tickets was made at my desk. I have a distinct recollection of that.

Redirect Examination by Mr. Anderson.

I saw Government Exhibit 74 at the Hotel and used it. I wrote the entry on the third line from the bottom. I wrote the name D'Oro, Room 616. It is my writing.

Recross Examination by Mr. Hamlin.

There were three in Mr. Gebardi's party. There was another younger man.

MILTON J. MILLER, a Witness for the Government, testified as follows:

104 *Direct Examination by Mr. Anderson.*

I live at 2320 Thalia Street, New Orleans, Louisiana. In January 1929 I was employed at the Edgewater Gulf Hotel, Edgewater Park, Mississippi. These two people (indicating defendants Vincent Gebardi and Louise Rolfe) were living at the Hotel in January, 1929. They were there for more than about two days. I brought their baggage out from the room on the 30th, wanting to go on the Panama Limited, leaving Gulfport at 12, Noon, to Chicago. I took two trunks out of their room and a golf bag. The Head Porter gave me two checks. Government Exhibit 71 is an Advice Card. I brought this up to put this Advice Card and two checks on each trunk. I attached the Advice Card, Government Exhibit 71 to the trunk. When I went up to their hotel room they had a golf bag, so I had to go downstairs and make out another check, which is 63 here, and is in my handwriting. The rest is the Head Porter's, Mr. Phillips. The 584261 covers one piece; 584262 covers another piece. I left off the 5842 on the third piece, which is marked 63. The other pieces of baggage were two wardrobe trunks. I brought the trunks down to the baggage room, transfer being made of them to Gulfport. That Advice card was attached to one of the trunks by me. I never saw the defendants in the room. I saw them once in the lobby. I saw them in the room when I got the trunks; that is, these two people (indicating defendants Vincent

Gebardi and Louise Rolfe) that was on January 30th, 1929, at the Edgewater Gulf Hotel, Edgewater, Mississippi. I had no conversation with either of them.

Cross-Examination by Mr. Hamlin.

I got the trunks down between 9:30 and 10 o'clock. I got the trunks out of this gentleman's room. I got another
105 trunk out of another room. It was an adjoining room. I took two trunks. They had two rooms, 616 and 617. There are two beds in that room. All the rooms in the Hotel have twin beds. I took both trunks out of 616. I took no trunks out of 617. I remember Mr. Gebardi, because he had another gentleman with him, not quite as large as he was, in the same rooms, 616-617. I do not know that the two gentlemen slept in the same room. They were not in the same room. I saw three of them in the same room. That is when I got the trunk. They were fully dressed. I remember no trunks that I moved on the 29th from the Hotel. I remember two trunks and a golf bag that I moved on the 30th. I am speaking about these trunks that I moved on the 30th. I don't remember any other trunks that I moved. I talked with no Government agent. I talked to Mr. Anderson before I went on the witness stand. I did not testify before the Grand Jury in this case. Some one from Room 616 and 617 called me and asked me to get the trunks. I don't know what gentleman it was. All I know is that I went to this room; that this man, and this woman, and this other man was there, and that I took the trunks out.

Redirect Examination by Mr. Anderson.

I talked with Mr. Anderson about five minutes before court opened. Mr. Phillips brought me here without a subpoena.

VIRGINIA GAUTIER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

106 At present I am living in Chicago. In January, 1929, I was living in Biloxi, Mississippi. I was employed at the Edgewater Gulf Hotel, as Cashier. I have seen Govern-

ment Exhibits 75 and 76 before. I was the Cashier at the time, and that is my signature, signifying that the bill was paid to me. One payment I remember clearly was made when the party checked out. Two bills were paid together. Those are ledger sheets from the Edgewater Gulf Hotel, Guest Ledger. The records are kept in my department. The gentleman sitting there (indicating defendant Vincent Gebardi) was at the window at the time the bill was paid. There were two of them and I am not sure whether he or the other one paid the bill. I knew these gentlemen under the name of D'Oro. I checked these bills at the time they were paid. This is the carbon copy that we keep for our files. On the day the parties checked out there was a refund of $319 made on Room 617, because there was a credit paid on the bill two days before, and on the other room the amount was $256.50, which was paid. I do not recall who received the other payment on the room. According to the records, I received it. I had no conversation with D'Oro outside of the occasion I referred to above.

Cross-Examination by Mr. Hamlin.

I live and work at the Chelsea Hotel in Chicago. I do not remember anything about the railroad fare. I know that these are all disbursements, I handle the disbursements; that is, most of them while I was in the office of the Edgewater Gulf Hotel.

107 JULES IBOS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am employed by the Edgewater Gulf Hotel, Edgewater Gulf Park, Mississippi. I was working and living there in January 1929. On January 28th, 29th, and 30th of 1929 I saw those people (indicating defendants Louise Rolfe and Vincent Gebardi) at the Edgewater Gulf Hotel. I knew them by the name of D'Oro. I saw them first the later afternoon of January 28th. I returned some suits to their rooms. They were pressed in the Valet Department of the Hotel. My valet brought some clothes down from Room 616 and 617 that had no names on the tags. There was some dresses, two

gowns and two suits, to be returned immediately. I examined the clothes, saw they had no name to charge them to, and during the conversation, talking of the clothes, I made the remark that the clothes were good, and my valet made the remark that there was a nice looking Spanish blonde at 616 and 617. I made the remark that I would take the clothes back myself so that I could see the Spanish blonde. The clothes were very good. I noticed the name in the markings on the clothes. The markings on the clothes was "J. McGurn." In the meantime I made a change and took it myself to the Cashier to verify the name. I don't remember whether the Cashier was Miss Gautier or Mr. Peora. Then, when I personally took the clothes back, I asked the gentleman, Mr. D'Oro, who the clothes was charged to. He then told me to charge to D'Oro. He spelled it for me. I asked him if the clothes from 617 were charged to the same party. He told me, "Yes," and I asked him the name of the party for
108 that room, he told me the name was D'Oro. I saw Mrs. D'Oro while I was talking then (indicating defendant Louise Rolfe as the person). I then went down to Mr. Burns' office. I reported the incident to Mr. Burns. I had no further conversation with Mr. Gebardi. That is the only time I saw them. At the time that I talked with them, Mr. and Mrs. D'Oro were in Room 616. There was no one else present. As I went out there was a gentleman coming out of the doorway at 617. That was the doorway that connected the two rooms. I went into Room 616 late in the afternoon. It was after 4 o'clock, near dinner time. 616 is connected with 617. The door was open between the two rooms. I saw another man besides Mr. Gebardi in the door; that is, I saw two men and a woman.

EDWARD W. PETERSON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I had occasion to look for tickets on the E. B. stamp, B 10, Number 707, 708 and 709. Those tickets were in my custody, but they were destroyed. They were destroyed six months after they were used.

VIRGINIA GAUTIER, a witness recalled for the Government, testified as follows:

Recross Examination by Mr. Hamlin.

I didn't write the figures $143.54 on Government Exhibit 75. I do not recall to whom I gave the $319 refund,
109 as shown by Government Exhibit 76. The money deposited was $250. When we checked out we had a refund of $319.20. I do not know to whom that money was given. This gentleman was at the window (indicating defendant, Vincent Gebardi). I think I made the figures 14354. The railroad transportation was charged to one room and not the other, because when the people registered in two rooms like that, 616-617, each account has marked on it, "See the opposite room." In a case like that, when a party checks out, it means that the two bills go to the same party.

FRANKLIN SCHMICK, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in Dubuque, Iowa. In January 1929, I was employed at the Edgewater Gulf Hotel. I saw Mr. Gebardi there at that time. I knew him as D'Oro. I also saw Mrs. Gebardi there (indicating defendant Louise Rolfe). The only definite recollection I have of seeing them the first time is in the private office of the Manager of the Hotel on the evening of the registration, when I saw Mr. D'Oro, Mr. Burns, Mrs. D'Oro and myself were present. Mr. D'Oro was there, at the request, I believe, of Mr. Burns and the three of us discussed the fact that Mr. D'Oro came in without a registration, and that being the case we naturally insisted upon some credit references. We were anxious to determine his credit standing, and it was in that connection that we talked. He referred us to the Congress Hotel. He also provided us with some cash. I believe it was about $350. He took it from
110 a roll of bills from his pocket. He was non-committal in regard to any other references. I believe Mr. D'Oro said that time that he was connected with an ice cream company. I saw Mrs. D'Oro in the dining-room, she was with

Mr. D'Oro and a gentleman whom I understand to be his brother. I didn't talk to Mr. D'Oro at any other time. After the references came back I had no further conversation with the defendants.

Cross-Examination by Mr. Hamlin.

They stayed at the Hotel the night of the 28th. I didn't see these people go out on the golf course. I am not certain that I did or didn't see them at any other times that I have mentioned. I was never at their Room 616 or 617. The defendants were never pointed out to me by any representative of the Government. I am certain that these are the two same persons.

Redirect Examination by Mr. Anderson.

I remember these people when they registered at the Hotel, from the fact that they had no reservation, and that they came from Florida, causing us to be somewhat inquisitive. It happens that we have very few cases of this kind in the Hotel, and naturally the circumstances stand out in my mind.

A. J. WIEST, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

111 I live in Chicago. Am employed at the Edgewater Beach Hotel. In January, 1929, I was employed as Room Clerk at the Edgewater Gulf Hotel. I have not seen Government Exhibit 77 before. I have seen Government Exhibits 78 and 79 before. I saw Government Exhibit 79 when I assigned this couple to a room when they arrived at the Hotel. They registered at my desk. I see the couple here now (indicating defendants Vincent Gebardi and Louise Rolfe). I saw Government Exhibit 78 at the same time. Mr. D'Oro registered for himself and Mrs. D'Oro, and Mr. Anthony D'Oro at the same time. The man I know as D'Oro wrote what is written on both of these cards. After he filled the cards out the customary questions were asked, whether or not he had a reservation,—the type of accommodations desired. He said he didn't have a reservation. He said that he wanted a double

room and a single room. I quoted him the rates that the records show. It was somewhere near the maximum rate. There was no comment in regard to the rate. I do not recall seeing the defendants after that.

Cross-Examination by Mr. Hamlin.

I have a distinct recollection of these people coming to the Hotel. I really recall his asking them whether they had a reservation. I remember reporting to the management that they had arrived without a reservation. I recall when these cards were signed. I do not know Mr. Gebardi's writing other than appears on this card. I recall seeing him sign the card. I am quite sure his brother did not sign
112 it. I remember seeing the brother there. There was some slight resemblance. His brother, I believe, is younger.

Redirect Examination by Mr. Anderson.

I do not remember if I quoted him anything in reference to price.

FRANK ADAMS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Pullman Conductor and was such in January of 1929, for the Illinois Central Railroad. At that time I usually took the Seminole out of Chicago. On January 25th I took the Seminole Limited from Chicago to Jacksonville. I do not see anyone in the courtroom that I saw on that train. I am familiar with these cards (indicating). Government Exhibit 42 is a ticket office diagram. I had that in my personal charge on January 25th, 1929. It shows Pullman reservations and Pullman space. I received it from the railroad ticket office when I took the car out. It was with me on the train. I take up the Pullman tickets on that car. I enter them on the diagram. Tickets accompanied the diagram and are turned over to the connecting conductor at Jacksonville. I have seen Government Exhibit 44 before. It is a continuation diagram from the first diagram. Exhibits 43 and 44

are Pullman diagrams, car diagrams. I made these out. Compartment B from Chicago to Jacksonville shows two
113 tickets, that is, two passengers. The numbers of the Pullman tickets are 292, which is the number on Government Exhibit 42. On these diagrams we wrote the number of passengers, the rate of the Pullman, the Pullman revenues and the railroad revenue. The record shows two passengers. I do not have the record of the two railroad tickets. The reference to Lower 6, the Pullman ticket, is 371 for one passenger. The destination is the same. 371 also appears on the diagram known as Government Exhibit 42. Government Exhibit 80 is an office diagram from Chicago to Fort Myers on the same car. They are passengers that got on at Birmingham, Alabama. Government Exhibit 81 is a diagram that comes from out of Columbus for the same car. Government Exhibit 82 is from Jacksonville to Fort Myers. These reports show the number of persons occupying a room or a berth. I do not know from my personal knowledge whether they were actually used or not. I can tell from the record whether the space was used.

(Documents marked GOVERNMENT EXHIBITS 42, 43 and 44 received in evidence.)

The railroad furnished stationery which we had in the Seminole, Limited. Government Exhibit 80, which is a postcard, are kept in the dining cars on the Seminole, Limited of the Illinois Central Railroad.

JENNIE A. CHAPIN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

114 I am a Chief Floor Clerk of the Stevens Hotel. I have, in my custody and charge, Government Exhibit 54. The records were made in the regular course of business. I did not write it myself. I know nothing of it personally. The slip was made out by one of the Floor Clerks. It is just a clerical routine.

(Document marked GOVERNMENT EXHIBIT 54 offered and received in evidence.)

Miss Black signed the Exhibit. She is no longer with us. The slip says, "The Stevens. Transfer Mr. and Mrs. J. Vincent D'Oro, Room 2313-A. O.K'd, 23rd Floor, to Room

1919-A O.K'd, 19th Floor, 2 trunks, 1 book, golf bag, clothing and 3 bags." 3 bags means, ordinarily, travelling bags. When a guest moves from one room to another a record is made of the transfer. The transfer is done by the Porter and the Floor Clerk on the floor.

ROSWELL SAYER, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a Pullman Conductor and was such in January 1929, on the I. C. Railroad. My run is on the Panama Limited in both directions. Government Exhibits 81, 82, 83 84, and 85 marked for identification are all mine. Government Exhibit 81 is an office diagram for Pullman Car No. 40 on the I. C. Train, No. 8, leaving New Orleans on January 30th, 1929. My train did not go through Biloxi. Cars coming from Gulfport would connect with my train at Jackson, 115 Mississippi. Government Exhibit 82 is also a Pullman diagram for Car No. 6 on the same train, same day. Government Exhibit 83 is a Pullman diagram for Car No. 6 leaving Gulfport January 30th, 1929, and arriving in Chicago on the 31st. It is partially in my handwriting; that is my signature. Government Exhibit 84 is an office diagram of the same car, same day, leaving Memphis. Government Exhibit 85 is an office diagram of the same car, same day, leaving Hattiesburg. Government Exhibits 81, 45 and 46 are made in reference to Car 40. Government Exhibit 45 is made up from tickets in the I. C. Ticket Office, by the man that sells the Pullman tickets. He sends it to me when I get on the train. The record shows that Drawing Room A, Car 40, was occupied by two passengers from Jackson, Mississippi. Government Exhibit 46 shows that Drawing Room A was occupied by three passengers from Jackson to Memphis and by two persons from Memphis to Chicago. At Memphis one transferred to Lower 7, Car 76. My train was due at Memphis, Tennessee at 9 P. M. at night. The train reaches Chicago at 9:30 A. M. Government Exhibit 81 is also a diagram for Car 40 from New Orleans to Chicago. In connection with these cards, there is no card showing the space from Gulfport to Jackson. Government Exhibit 83 shows that five passengers occupied Car 6 between Gulfport and

Jackson. I cannot tell from the records whether any of these persons took Drawing Room A that I above referred to. Government Exhibit 83 simply says that five passengers occupied the car from Gulfport to Jackson. That car is not in my charge at that point. The persons occupied seats in the sleeping car. Government Exhibit 82 is a card for Car
116 6, or diagram for Car 6, Jackson to Chicago. I wrote nothing on the card. Government Exhibit 85 is a diagram for Car 6, Hattiesburg to Chicago. Government Exhibit 85 is from Memphis to Chicago. Government Exhibit 70 is a diagram from Gulfport to Chicago. That covers the portion between Jackson and Gulfport. There is a notation on this diagram which says "3 seats to Jackson in Section 4" in that car.

(Documents marked GOVERNMENT EXHIBITS 83, 46, 45 and 81 received in evidence.)

The tickets for Drawing Room A and Lower 7, Car 66, were returned to the Pullman office when I got back to Chicago.

W. F. BARNES, a witness for the Government, testified as follows:

Redirect Examination by Mr. Anderson.

I am connected with the Pullman Company. I am Chief Clerk of Receipts. The Ticket Auditor has charge of all cancelled Pullman tickets. Regulations of the Interstate Commerce Commission cover their disposal. Tickets for January 31st, 1929 have all been destroyed.

THOMAS BURNS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in Edgewater Park, Mississippi. I am the Resi-
117 dent Manager of the Edgewater Gulf Hotel in Edgewater Park. I see a couple here now, known to me as Mr. and Mrs. Vincent D'Oro, whom I saw there in January, 1929 (indicating defendants Louise Rolfe and Vincent Gebardi). In the ordinary course of business in the afternoon of

January 28th, I received a report of my office about Mr. D'Oro. I got another report from the Room Clerk and I sent word to Mr. D'Oro that I wanted him to come to my office. He came to my office. I said to him, that if he did not have reservations in the Hotel, it is customary to establish credit accommodations, and asked him to fill out a credit card, and I asked him to give me some references. I saw Government Exhibit 77 before. On the evening of the 28th of January, in my office, Mr. D'Oro wrote what is on there. He was across from my desk in the office when he wrote it. I asked Mr. D'Oro for references. I gave him a credit card to fill out and he filled this out. It just gave a hotel address and I did not consider that sufficient, so I asked him if he would put some cash in his account. He said he would be glad to do that. He took it all calmly and was very genial about it. He reached down in his pocket and pulled out a roll of bills. He wanted to hand me the money, but I told him to make the deposit with the Cashier. Mr. Franklin Schmick was also in the office with us. I saw the other party that registered with D'Oro the next day in the lobby. He wasn't in the room with us when I asked D'Oro for credit references. I knew him by the name of Anthony. I never said anything to Anthony about making payments, nor did Anthony show me any money. After I told Gebardi to make a payment, he left the office. He asked me how much he should put on deposit. I said three or four hundred dollars would be
118 alright. I told him to take the money to the Cashier's desk. He had some large bills. When I received the information from different organizations in reference to Mr. D'Oro's credit, I left a note in his box and called his room, and asked him to see me again. He didn't see me again. I dropped the note in his box and called him later in the afternoon on the 29th of January. He left the Hotel after breakfast on the 30th. I saw him go out of the Hotel about 10 or 11 o'clock. He had a lady and another gentleman with him. I didn't have any occasion to talk with the lady. Mr. D'Oro said in his conversation with me that he had his wife and brother with him. Mr. D'Oro also said that he was with some biscuit Company and lived at the Congress Hotel. He said he wasn't working now. That he had not worked for some time. He had been a salesman. He said he came from Florida. He said the length of his stay would depend on how he liked it. I asked him whom he knew in Chicago, but he would not connect any mutual acquaintances.

Possibly two or three we

Cross-Examination by Mr. Hamlin.

Mr. Schmick was in the room when the conversation took place. Mr. D'Oro didn't hand Mr. Schmick any money. He said he had come to the Hotel because he had heard some favorable reports of the Hotel. He said he was going to play golf. He said he heard we had a good golf course and he was going to try it out. I saw him on the golf course. I didn't see Mrs. D'Oro playing with him. I do not recall who was carrying the golf sticks. After Mr. D'Oro went out, I asked the Cashier if the money had been paid to her, and she said "Yes." I don't know of my own knowledge, who paid it.

119 *Redirect Examination by Mr. Anderson.*

At the time the party left the bill was paid in full. I do not know who paid it. Government Exhibits 75 and 76 showed that the railroad transportation was charged to the account of D'Oro, in the amount of $143.54. It was paid when he settled his bill on the morning of the 30th.

WILLIAM MAASS, a witness for the Government testified as follows:

Direct Examination by Mr. Anderson.

"Mr. Anderson: Q. How often did you have occasion to go there?

A. I am not sure; three or four times.

Q. You think that is all?

A. Yes, sir.

Q. Were you there on the 27th of February, 1929, the day they were arrested?

A. Yes, sir.

Mr. Hamlin: I object to that. There is no evidence in the record that they were arrested.

Mr. Anderson: Well, there will be.

Mr. Hamlin: But you have no right to anticipate it.

Mr. Anderson: Q. Isn't it a fact that you went in on that day?

A. Yes, sir.

Q. And the police came in behind you?

A. No, sir.

Mr. Hamlin: You cannot cross-examine your own witness, and I object to it.

Mr. Anderson: Q. On that day, didn't you see both the defendants?

Mr. Hamlin: I object to the form of the question.

The Court: He may answer.

The Witness: One day I served papers to the lady and I seen a gentleman sitting in the room.

Mr. Hamlin: Trying to impeach his own witness.

The Court: He may answer.

Mr. Hamlin: All right. I abide by your ruling.

The Witness: I served papers to the lady, and I seen a gentleman sitting in the room.

Mr. Anderson: Q. Which gentleman?

A. I don't know who he was. The room was dark.

Q. You don't see that man here now?

A. No, sir.

Q. On how many occasions did you see the gentleman in the room?

A. Just once.

Q. Do you know what date it was?

A. I don't know. I think it was the 27th, 1929.

Q. The day they were arrested?

A. I don't know when they were arrested.

Mr. Hamlin: I object to that.

The Court: He says he doesn't know.

Mr. Anderson: Cross-examine.

Mr. Hamlin: No cross-examination,"

JAY ABRAMS, a witness for the Government testified as follows:

Redirect Examination by Mr. Anderson.

Mr. Anderson: He was sworn yesterday.

Q. You are the same Mr. Abrams who was sworn in this case before?

A. Yes, sir.

120 Q. Calling your attention to February 27, 1929, did you have occasion to go to Room 1919 in the Stevens Hotel?

A. Yes, sir.

Q. Who did you accompany, if anybody?
A. Lieutenant Cusack and his men.
Q. Did you see anybody in that room that you see here today?
A. I saw Mr. McGurn and Mrs. McGurn.
Q. And by Mr. and Mrs. McGurn, you mean the defendant here, known as Vincent Gebardi and Louise Rolfe?
A. Yes.
Q. How was Mrs. McGurn dressed.
A. She had—I think she had a kimona on. I wouldn't be positive on that. She was dressed.
Mr. Hamlin: She was dressed, you say?
A. Yes, sir.
Mr. Anderson: Q. How was the defendant, Vincent Gebardi, dressed?
A. He had his trousers on, without a shirt on.
Q. Tell just what took place after you came in there.
A. The officers went in and I came in afterwards.
Q. Tell what you saw and what you heard, said and who said it.
A. The officers went in there and I came in after that, and they talked then about a lot of things, but I didn't pay much attention to it.
Q. You don't recall what they said?
A. No, they were questioning them and I went out.
Mr. Anderson: Cross-examine.

By Mr. Hamlin.

Q. You remember testifying in the Municipal Court of the City of Chicago pertaining to a certain fornication case between the State of Illinois and Vincent Gebardi?
A. No, sir.
Q. Did you testify in that case?
A. I testified they were in the room.
Q. I say, did you testify in that case?
A. Yes.
A. Yes, sir, that is as to the records, the register sheet.
Q. What time of the day or night was it when you made your call with these officers?
A. Around noon time sometime.
Q. What day of the year?
A. Well, that I don't remember.
Q. Had you had the room under observation that morning?

A. When the officers came, yes.
Q. I mean, did you personally have it under observation?
A. No, not until the officers came.
Mr. Hamlin: That is all.
(Witness excused)

JAMES L. WOULFE, a witness for the Government testified as follows.

Direct Examiantion by Mr. Anderson.

"Q. State your name?
A. James L. Woulfe.
Q. What is your busines?
A. Police Officer, City of Chicago.
Q. Was it such in January, 1929?
A. Yes Sir.
Q. Calling your attention to January 31—no,. February 27, 1929 did you have occasion to go to the Stevens Hotel?
A. I did.
Q. Who were with you?
A. Lieutenant Cusack and Officer Pieske.
Q. The witness who just testified, was he with you—Abrams?
A. Yes, sir.
Q. What room did you go to, if you know.
A. We went to the room, as I remmeber, 1920-A.
Q. What did you do there?
A. We were listening for conversation in 1919-A.
Q. How long did you listen for conversation in 1919-A?
A. Oh, maybe ten or fifteen minutes.
121 Q. Did you hear any voice that you recognized?
A. I didn't. Lieutenant Cusack recognized the—
Mr. Hamlin: I object to what Lieutenant Cusack did.
Mr. Anderson: Q. After Lieutenant Cusack recognized some voice, what happened?
A. He said they was in the other room.
Q. Well what did you do?
A. Why, I opened the door of the room we were in, and there was a man, a buss-boy bringing in some foods, so we followed the buss-boy right in the room.
Q. Was that the witness who testified, Mr. Maass?

A. I don't know if that is the buss-boy or not.
Mr. Hamlin: He said his business was the houseman.
Mr. Anderson: The bell-boy he called himself.
Q. Did you see him, who called himself the bell-boy or bellman?
A. I don't know if that is the fellow or not. I didn't pay much attention to him.
Q. All right, when you came into the room, what did you see?
A. I seen Jack McGurn and Louise Rolfe.
A. The defendants in this case?
A. Yes, sir.
Q. These you see here now?
A. Yes, sir.
Q. This was at the Stevens Hotel in Chicago, Illinois?
A. Yes, sir.
Q. Tell us what took place in the room, when you got in there?
A. Well, Jack was sitting down reading a newspaper and Louise Rolfe was sitting on the other side of the room, and we searched Jack and then Lieutenant Cusack ordered us to search the room, so we searched the room. I searched the dresser and he had two—
Mr. Hamlin: Your Honor, I object to this; this search was evidently illegal.
The Court: Was it a Federal officer?
Mr. Hamlin: A City officer.
The Court: Go ahead.
The Witness: We searched the rooms and I was looking for fire-arms and I found two revolvers in the dresser, Officer Pieske searched the trunks and other parts.
Mr. Hamlin: I object to what the other officer did.
The Court: Tell only what you saw.
The Witness: Well, I took two revolvers out of the dresser drawer.
Mr. Anderson: Q. What kind of baggage did you see there?
A. Well, there was a couple of trunks.
Q. Do you know what kind of trunks they were?
A. Wardrobe trunks, a couple of handbags, a ladies' hatbox";

ERNEST A. PIESKE, a witness for the Government testified as follows:

Direct Examination by Mr. Anderson.

Q. State your name?
A. Ernest A. Pieske.
Q. What is your business, Officer?
A. Police Officer, City of Chicago.
Q. Was it such in January, 1929?
A. Yes.
Q. Calling your attention to January 31, 1929, did you have occasion to go to the Hotel Stevens, Chicago, Illinois?
A. No.
Q. February 27th, I mean to say?
A. Yes, sir.
Q. Tell the Court who accompanied you, and what you did there, and what you saw, and what was said there, and who said it.
A. Lieutenant Cusack, Mr. Woulfe, Mr. Abrams and myself went to the hotel and went to the room adjoining 1919 A about 10:30 A. M. and we listened for a while, and finally left that room and followed a bell-boy with a tray of
122 food into room 1919A. We got in there and I saw Jack McGurn and Louise Rolfe in the room.
Q. The defendants in this case?
A. Yes, sir.
Q. That you see here now?
A. Yes, Sir.
Q. Calling your attention to January 31, 1929, did you have occasion to go to the Hotel Stevens, Chicago, Ill.
A. No.
Q. February 27th, I mean to say?
A. Yes, sir.
Q. Tell the Court who accompanied you, and what you did there, and what you saw, and what was said there, and who said it.
A. Lieutenant Cusack, Mr. Woulfe, Mr. Abrams and myself went to the hotel and went to the room adjoining 1919-A about 10:30 A. M. and we listened for a while, and finally left that room and followde a bell-boy with a tray of food into Room 1919-A. We got in there and I saw Jack McGurn and Louise Rolfe in the room.

Q. The defendants in this case?
A. Yes, sir.
Q. That you see here now?
A. Yes, sir.
Q. Yes.
A. (continuing) And after we got in there Lieutenant Cusack ordered us to search the room. I searched the room and went into a dresser and picked up several notes and read them.
Q. I am going to ask you to read what is on this card and tell the Court whether that is the card that you picked up at that time?
A. You want me to read it out loud?
Q. No. Read it to yourself.
A. Yes.
Q. You saw that card?
A. Yes, sir. I picked it up and read it.
Q. Referring to Governments Exhibit 80. I will ask you to look at Government's Exhibit 84 and read that to yourself and then tell the Court whether or not you saw that before—or read a part of it?
A. Yes, I picked this us and read it.
Q. I shall ask you to read a part of Government's Exhibit 85 and then determine whether or not you picked that up in that room?
A. Yes, I read this one too.
Q. I shall ask you to read Government's Exhibit 86 to yourself, or part of it, and determine whether or not you picked that up in the room?
A. Yes, I read this one too.
Q. Where did you pick up these papers, referring to Government's Exhibits 80, 84, 85 and 86?
A. I got them out of a dresser drawer in Room 1919-A in the Stevens Hotel.
Q. I show you Government's Exhibits 53, 87, and 88 and ask you if you saw them there at that time?
A. Yes, I saw these pictures there.
Q. Where did you see them?
A. In Room 1919-A Stevens Hotel.
Q. How did you happen to see them?
A. They were found.
Q. By whom?
A. By Officer Sullivan.
Q. Do you know where?

A. Picked up in the room there. That was Officer Sullivan; Joseph Sullivan.
Q. You saw them there in the room?
A. Yes, sir.
Q. And you saw quite a few other pictures?
A. Yes, sir; snap shots.
Q. Pictures like these in this book (indicating)?
A. Yes, sir.
Q. What conversation, if any—or, did you see the defendants there?
A. Yes. I did.
Q. How was the defendant, Louise Rolfe dressed when you came in there?
A. She had on a dressing gown and a pair of slippers, fancy slippers.
Q. How was the defendant Jack McGurn or Vicent Gebardi dressed?
A. He had on a pair of house slippers, his trousers and a black dressing robe over that.
Q. Did he have a shirt on?
A. No shirt on.
Q. Tell the Court what conversation was had there.
A. I had no conversation. Lieutenant Cusack talked to them.
Q. Did you hear any of that?
A. I didn't pay any attention to it."

123 FRANK A. SHEEDER, a witness for the Government, testified as as follows:

Direct Examination by Mr. Anderson.

I am a Court Reporter, and was such on February 27th, 1929. I took down the spoken words of Miss Rolfe on February 27th, at 4:20 P. M. (indicating defendant Louise Rolfe). I was in the Detective Bureau when I took down the spoken words. Also present was Mr. Ditchburne, Lieutenant Cuasck, Walker Butler, Chief Stege, and Mr. Stansbur. There may have been other officers there. I don't remember. I have the short-hand notes that I wrote at that time. I also took down the testimony and statement of Louise Rolfe, at 3 O'Clock on February 28th, 1929. Mr. Ditchburne, Mr. Walker Butler, Lieutenant Cusack and a Police Matron were present.

I also took down questions and answers in the presence of Jack McGurn on February 27th, 1929, at 1:15 P. M., in the Stevens Hotel. Mr. Ditchburne, Chief Egan, and Commissioner Stege and some other officers were present.

(Documents marked GOVERNMENT EXHIBITS 89, 90 and 91 were received in evidence).

M. J. CUSACK, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

The Court: Is this for the purpose of showing what was in this room?

Mr. Anderson: Merely to corroborate the testimony about the exhibits.

The Court: Is there going to be any controversy that these came from the room?

Mr. Hamlin: To be perfectly frank, neither of our witnesses can go on the stand to deny a thing, and it is impossible to deny they were not in that room.

The Court: Don't take the time—I don't think further identification then is necessary.

124 Mr. Anderson: I want the record particularly to show—

The Court: Well, go ahead. Go ahead. You had police officers over there to testify to the same facts, that these people were arrested, that they were in the room; they can't deny it and they can't deny that these came from the room.

Mr. Hamlin: They can't even go on the witness stand.

Mr. Anderson: Q. What is your name?

A. M. J. Cusack.

Q. What is your business?

A. Lieutenant of police.

Mr. Hamlin: I am willing to stipulate that his testimony would be substantially the same as the other officers.

Mr. Anderson: With reference to Exhibit 80, 84, 85 and 86, and Government's Exhibits 53, 87 and 88.

The Court: You have seen those exhibits?

The Witness: Yes, sir.

The Court: They were in that room?

The Witness: Yes, sir.

The Court: You took them away with you?

The Witness: Yes, sir.

HOWARD A. ROUNDS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am a handwriting expert. I have seen Government 125 Exhibits 80 and 85 before. In my opinion Government Exhibit 34, on page 85, second line, Mr. and Mrs. Jack D'Oro, was written by the same person who wrote Government Exhibits 80 and 85. In my opinion, the person who wrote Mr. and Mrs. Jack McGurn, Chicago, Illinois, on Government Exhibit 40, also wrote Government Exhibits 84 and 86. I would say that Government Exhibits 78 and 79 were written by the same person who signed the Mr. and Mrs. J. McGurn on Exhibit 40. I have seen Government Exhibit 77 before. In my opinion the same person who wrote Mr. and Mrs. Jack McGurn, Chicago, Illinois, wrote it as on Government Exhibit 77.

Cross-Examination by Mr. Hamlin.

I do not expect to get another $50.00 for testifying to-day.

W. M. CHILTON, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I am employed at the Dallas Park Hotel. It is located at the corner of First Avenue and Third Street, Southeast, Mimai, Florida.

EDWARD A. SMITTLE, a witness for the government, testified as follows:

Direct Examination by Mr. Anderson.

126 Government Exhibit 31 is a record sheet of the baggage that was taken from the train and sent to the baggage room of the Central Station, Chicago. Numbers 584262

and 584261 shows that the baggage was removed from a car on Train 6, which is the Panama Limited. The baggage was taken into the baggage room. Government Exhibit 32 is the delivery sheet to show a record of the delivery of the baggage—where it goes to. I have the same baggage on this Exhibit. It shows it was delivered to the Parmelee Company with the Parmelee checks 93955 and 93956.

(Documents marked GOVERNMENT EXHIBITS 31 and 32 were received in evidence.)

C. G. OLIVEROS, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

I live in St. Augustine, Florida. I am employed by the Florida East Coast Railway, in the General Passenger and Traffic Department. I have records with me that I brought from St. Augustine. I saw Government Exhibits 92, 93 and 94 when they were taken out of our records in my file room in St. Augustine, Florida. They are records in reference to baggage. Government Exhibit 92 is dated January 27th, 1929. Government Exhibits 93 and 94 are dated the same day. Government Exhibits 93 and 94 are records in reference to baggage which had check Numbers 162021 and 162022. Government Exhibit 92 is with reference to baggage which checks 307912 and 307913.

127 (Documents marked GOVERNMENT EXHIBITS 92, 93 and 94 received in evidence).

Government Exhibits 93 and 94 are office records of the Florida East Coast Railway, in connection with the handling of certain baggage from St. Augustine to Biloxi, Mississipi, on January 27, 1929, and they are the records of the Florida East Coast Railway from St. Augustine to Jacksonville only. Government Exhibit 93 shows that baggage checked under No. 162021 and 162022 was shipped from St. Augustine to Biloxi on Train 34, on January 27th, 1929, and delivered to our Baggage Master on the same train at St. Augustine through Jacksonville. Government Exhibit 94 shows the record of our Trainmaster, where we handled the baggage from St. Augustine to Jacksonville and delivered it to the Jacksonville Terminal. Government Exhibit 92 shows a record of handling two pieces of baggage from St.

Augustine to Jacksonville, 307192 and 307193, by our Baggage Master Rooney, on Train 29, and was delivered to the Baggage Master at the shed. It came from Jacksonville to St. Augustine. Our office records would not show a change of the numbers 307912 and 307913 and 162021 and 162022. This baggage was taken from Jacksonville to St. Augustine. We handled the baggage, and that one, same day, return. We would not know whether it was the same record. In other words, it does not mean it was the same baggage billed St. Augustine to Biloxi. W. A. Hewey was at that time the Baggage Agent at St. Augustine. I do not know whether Mr. Hewey stated to a Government Agent that the baggage check numbers were changed. I do not know that we have a record that would show such a change in St. Augustine. If baggage came down from Jacksonville to St. Augustine, and then went right out, our records would not show such an exchange.

128 T. J. GEEGAN, a witness for the Government, testified as follows:

Redirect Examination by Mr. Anderson.

I have seen Government Exhibit 95 before. This is my writing on the seventh line from the top. It is a record of two trunks delivered on the 22nd of January, 1929, by the Parmalee Transfer Company. The trunks were put in Room 2313A at the Stevens Hotel. I made the record myself in the regular course of business at the time of the transaction.

M. J. GALLAGHER, a witness for the Government, testified as follows:

Redirect Examination by Mr. Anderson.

I am employed at the Stevens Hotel. I was employed at the Stevens Hotel on January 21st, 1929. I have seen Government Exhibit 95 before. I made the record on the sixth line from the top. I made the record that there were 4 bags, 1 gold bag, and 2 trunks. I do not remember what kind of trunks. The record does not show. The record shows that it was delivered to Room 2313A, at 11 o'clock, on the 31st of

January, 1929. I wrote Parmalee Checks from the Illinois Central Depot, 584263, 538523, 53854 and 53855. I wrote the name D'Oro on that line.

(Document marked GOVERNMENT EXHIBIT 95 received in evidence.)

DR. EDWARD I. SLOAN, a witness for the Government, testified as follows:

Direct Examination by Mr. Anderson.

129 My name is Edward I. Sloan. My business is Physician and Surgeon United States Public Health Service. Since 1919 I have been connected with the Government as a Physician. "Kotex" is a trade name for merchandise manufactured and known as a sanitary napkin. "Kotex" is generally worn over the vagina during menstruration periods.

(At the conclusion of the testimony at this point, GOVERNMENT EXHIBITS numbered 1 to 100, inclusive, excepting Nos. 69 and 82, were admitted in evidence.)

C. G. OLIVEROS, recalled as a witness on behalf of the Government, further testified as follows:

Fedirect Examination by Mr. Anderson.

I am the same C. G. Oliveros who tetsified on May 28, 1931. I am still employed by the Florida East Coast Railway Company, at St. Augustine, Florida. I would like to correct certain parts of my testimony of May 28. Apparently, I misunderstood your questions because if we would have a piece of baggage taken from Jacksonville to St. Augustine and it was not taken out of the baggage room and left there that day or the next day and then the baggage was rechecked, the Agent would have a record which we call a rechecked record. Previously, I had said that our office records would not show such a transaction. Government Exhibit A is a Form 532 check sheet of out-bound baggage from St. Augustine, issued at the St. Augustine baggage room. This record was kept in the files of the Florida East Coast Railway by the Baggage Agent at St. Augustine. It was not

found in its regular place. It is an official record of the
130 company. The record indicates that two pieces under checks 307912 and 307913 were checked from St. Augustine to Biloxi under checks 162021 and 162022, on January 27, 1929. It shows the baggage to be two trunks. TK is the abbreviation for trunk.

Cross-Examination by Mr. Hamlin.

This is not in my handwriting. I have nothing to do with the preparation of it. I am Chief Clerk of the Passenger Traffic Department. I found the record in the stationary cabinet in the office of the Baggage Agent at St. Augustine. I found it about June 20, 1931. I looked for it because I was asked to get it. I do not know where it has been kept since the date it appears, since January 1929. The Assistant Baggage Agent, P. Oliveros, made the entry on these two lines. I do not know when he wrote it. I do not know whether it has been changed at any time. P. Oliveros is an uncle of mine. He has no official connection in the company with me.

Redirect Examination by Mr. Anderson.

Mr. Oliveros, the man who made the entry, is no longer with the railroad. He was discharged in May of 1931.

(Document marked GOVERNMENT EXHIBIT "A" received in evidence.)

131 GOVERNMENT EXHIBIT 1.

Lexington Hotel No. 1320.
Chicago, Ill.

Thursday, Sept. 13.

On the ninth line appears the following registration:

CK	Name	Residence	Time	Room
58620	G. McManis	So. Bend	Weekly	854 B 88

GOVERNMENT EXHIBIT 2.

Lexington Hotel No. 1552.
Chicago, Ill.

On the same form as Government Exhibit 1, bearing date Thursday, May 2, 1929.

The following registration appears on line 6:

CK	Name	Residence	Time	Room
63892	Louis Nolan & Wife	City	Wk.	854 AH JJ

GOVERNMENT EXHIBIT 3.

Lexington Hotel—Chicago.

Name McManus, G. Room No. 854
File No. 59358 Weekly Rate $25.

This sheet shows various entries for the month of October, from the 12th to the 26th, inclusive, during the year 1928, the account being continued on and forwarded to the following sheet designated as Government Exhibit 4.

132 GOVERNMENT EXHIBIT 4.

Lexington Hotel—Chicago.

Name McManus, G. Room No. 854.
File No. 59688 Weekly Rate $25.

This sheet shows various entries from October 26th to November 12th, both inclusive, 1928, the account being continued on and forwarded to the following sheet designated as Government Exhibit 5.

GOVERNMENT EXHIBIT 5.

Lexington Hotel—Chicago.

Name McManus, G. Room No. 854.
File No. 60066 Weekly Rate $25.

This sheet shows various entries from November 11th to November 26th, both inclusive, 1928, the account being continued on and forwarded to the following sheet designated as Government Exhibit 6.

GOVERNMENT EXHIBIT 6.

Lexington Hotel—Chicago.

Name McManus, G. Room No. 854.
File No. 60358 Weekly Rate $25.

This sheet shows various entries from November 27th to December 12th, both inclusive, 1928, the account being continued on and forwarded to the following sheet, designated Government Exhibit 7.

133

GOVERNMENT EXHIBIT 7.

Lexington Hotel—Chicago.

Name McManus, G. Room No. 854.
Date of Arrival 12/18/28 Weekly Rate $25.00
Date of Dept. 12/~~18~~22/28 File No. 60827

This sheet shows various entries from December 13th to December 21st, both inclusive, 1928, showing a debit balance of $92.49, and a credit of $92.49, under date of 1/28.

GOVERNMENT EXHIBIT 8.

Lexington Hotel—Chicago.

Name Nolan, L. Wife Room No. 854
Date of Arrival 5/2 File No. 63892
Weekly Rate $25.00

This sheet shows various entries from May 2 to May 16th, both inclusive, 1928.

GOVERNMENT EXHIBIT 9.

Lexington Hotel—Chicago.

Name Nolan L. & Wife Room No. 854
File No. 64490. Weekly Rate $25.00

This sheet shows various entries from the 27th to the 31st of May, both dates inclusive, 1928.

GOVERNMENT EXHIBIT 10.

Lexington Hotel—Chicago.

Name Nolan L. & Wife Room No. 854
File No. 64248. Weekly Rate $25.00

This sheet shows various entries from May 17th to May 26, both inclusive, 1928.

134 GOVERNMENT EXHIBIT 11.

This Exhibit is on the same form as Government Exhibit 1; it is numbered 1321, and dated Friday, Sept. 14, 1928.

GOVERNMENT EXHIBIT 12.

This Exhibit is on the same form as Government Exhibit 1; it is numbered 1319, and dated Wednesday, Sept. 12, 1928.

GOVERNMENT EXHIBIT 13.

Hotel LaSalle.

Sheet No. 86 Register No. 324 Date Jan 24 1929.

On the sixth line appears the registration:

	Name	Residence		Room
X 60	Mr. & Mrs. Vincent D'Oro	Havana Cuba	35 X	1113

GOVERNMENT EXHIBIT 14.

Hotel LaSalle.

Watch 3-11 Cashier H. Webb Date Jan 25 1929

On the Thirty-seventh line appears the following entry:

Room No.	Name	Transient.
1113	D'Oro (2)	940

GOVERNMENT EXHIBIT 15.

Hotel LaSalle.

Out-going Baggage		Continued		Date Jan 25 1929
Room	Where to	Time	Trunk	Porter
1113	I. C.	6 30	2	Neary

135

GOVERNMENT EXHIBIT 16.

The following appears on the face:

Illinois Central Railroad
Chicago
To
Birmingham (Ticket punched here B C)
Destination
Jacksonville, Fla. (Ticket punched here)
A1754
Issued by Illinois Central R. R. Co. (Ticket punched here)
Via IC, CofG, ACL.

Stamped on reverse side:

19 Central Station 19
Jan 25 '29.

GOVERNMENT EXHIBIT 17.

The following appears on the face:

Illinois Central Railroad
Chicago
To
Birmingham (Ticket punched here B C)
Destination
Jacksonville, Fla. (Ticket punched here)
A1752
Issued by Illinois Central R. R. Co. (Ticket punched here)
Via. IC, CofG, ACL.

Stamped on reverse side:

19 Central Station 19
Jan 25 '29.

136 GOVERNMENT EXHIBIT 18.

The following appears on the face:

Illinois Central Railroad
Chicago
To
Birmingham (Ticket punched here B C)
Destination
Jacksonville, Fla. (Ticket punched here)
A1753
Issued by Illinois Central R. R. Co. (Ticket punched here)

Stamped on reverse side:

19 Central Station 19
Jan 25 '29.

GOVERNMENT EXHIBIT 19.

The following appears on the face:

Issued by
Illinois Central
Railroad Co.
Good For
One Continuous Passage
to destination shown herein which must be reached not later than midnight of date punched in margin.
Not good after date punched Jan 29 1929
A1754 Atlantic Coast Line R. R.
Albany
To
Jacksonville, Fla. (Ticket punched here)
Via IC, CofG, ACL.

Stamped on reverse side:

19 Central Station 19
Jan 25 '29
Also the date— Jan 27 1929.

137 GOVERNMENT EXHIBIT 20.

The following appears on the face:

Issued by
Illinois Central
Railroad Co.
Good For
One Continuous Passage
to destination shown hereon which must be reached not later than midnight of date punched in margin.
Not good after date punched Jan 29 1929
A1753 Atlantic Coast Line R. R.
Albany
To
Jacksonville, Fla. (Ticket punched here)
Via IC, CofG, ACL.

Stamped on reverse side:

19 Central Station 19
Jan 25 '29
Also the date— Jan 27 1929.

GOVERNMENT EXHIBIT 21.

The following appears on the face:

Issued by
Illinois Central
Railroad Co.
Good For
One Continuous Passage
to destination shown hereon which must be reached not later than midnight of date punched in margin.
Not good after date punched Jan 29 1929
A1752 Atlantic Coast Line R. R.
Albany
To
Jacksonville, Fla.
Via IC, CofG, ACL.

Stamped on reverse side:

19 Central Station 19
Jan 25 '29
Also the date— Jan 27 1929.

138 GOVERNMENT EXHIBIT 22.

Containing Transportation enclosed in Identifying Check Envelopes, Form 918, collected from passengers in

Car No. 257 Illinois Central System
Jan 27 1929
Centarch Leaving
Name of Sleeper Chicago
In Train No. 215 1/25/1929
En Route to Fort Myers, Fla.

Numbers of Identifying checks issued by

1st Conductor	2nd Conductor	3rd Conductor	4th Conductor
F. R. Richter	Cater	J. A. Maxwell	

On the reverse side appears the following:

	Number and Location of Passengers in Car				
Conductors	1st	2nd	3rd	4th	5th
Sec. L6	1	1	1	1	

On the 11th space the following appears:

B. Sec. 11	2	2	2	2	

GOVERNMENT EXHIBIT 23.

Jan 27 1929
Illinois Central System
No. 994281 (Punched)
Berth L6 D R B Car No. 257.
Number of Passengers
Men 2 Women 1 Children .....
Kind of Transportation
Interline "Single" 2
Reading from 0 to Jacksonville.
(3)

F. RICHTER
Conductor.

139 GOVERNMENT EXHIBIT 24.

Friday, January 25, 1929.

On the 11th line the following entry appears:

11-13 to I. C.	2938-39	2	0	180

GOVERNMENT EXHIBIT 25.

The Parmelee Company C 95131.
Tel. No. 1113 Date 1/25/1929.
Check No. 2938-39
From LaSalle
To be forwarded to I. C. 1025 M. Train
1929 Jan. 25 PM—6:44 Tickets Number
Cash 1.80

GOVERNMENT EXHIBIT 26.

The Parmelee Company
Authorized R. R. Passenger and Baggage Transfer
Transfer Baggage Receipt
Received from LaSalle Hotel. 7:40 P.M.
Driver Burnett, Chicago 1-25-29

Line No.	Check No.	Description of Baggage	Initials of Claim
2	2938	W.T.	C.
3	2939	W.T.	C.

The following stamp also appears:

Received Central Station Baggage Agent—J. T. Williams 25—1929

I hereby acknowledge the receipt of ..... pieces of baggage bearing checks and description as described above. I. C.

H M
Agt.

140 GOVERNMENT EXHIBIT 27.

Record of Checks exchanged at Baggage Room. January 25, 1929. 6:05 P. M.

Time	Form of Tickets	Ticket Numbers	Check Numbers	Destination	Check Numbers
8:35	223-3J	1752	2938	Jacksonville	18526
"	"	1753	2939	"	" 25
"	"	1754			

GOVERNMENT EXHIBIT 28.

Exhibit 28 is on the same Form as Exhibit 26.

Received from Lasalle Hotel 7:40 P.M.
Driver Burnett, Chicago 1-25-1929

GOVERNMENT EXHIBIT 29.

The Parmelee Company D 2699
Tel No. 2313A
Name on Bell—D'Oro
Check No. 93955-6
Exchange 584261-2
From I. C.
Via Stevens Hotel
Cash $1.80

Exhibit 29 is on the same Form as Exhibit 25. The following stamp also appears on the face of the Exhibit:

Porter
1929
January 31, AM 11:10, Hotel Stevens.

GOVERNMENT EXHIBIT 30.

Exhibit 30 is on the same form as Exhibit 26.

Received from I.C. M.C 11:35 A.M.
Driver Mackin, Chicago 1 31—1929.

Line No.	No. of Check	Description of Baggage	Initials of Claim
2	93955	M.C.	C
4	93956	"	"

Stevens Hotel, dated 1-31-29—11:50 A.M.
Signed Mackin, Agent.

141 GOVERNMENT EXHIBIT 31.

Record of baggage received at Chicago, January 31, 1929.
Illinois Central System

Description of Baggage	Check Nos.	Initials	To
W. T.	584262	I.C.	
"	584261	"	Light

GOVERNMENT EXHIBIT 32.

Record of Baggage Delivered 1 31 29

Kind	Number	Transfer Co Delivered to	Number	Address Delivered to	Description
W.	584262	Par	93956	Stevens	W.D
W.	584261	Par	93955	Stevens	"

GOVERNMENT EXHIBIT 33.

Illinois Central System
Station Baggage Way-Bill

Chicago Station, January 25, 1929 Train No. 9

Description Checks	Destination	Check Nos.	Des. of Baggage
I.C.	Jacksonville	18326	W.D.
"	"	18325	"

GOVERNMENT EXHIBIT 34.

The Stevens

Sheet No. 85 Register No. 36 January 31-29

	Name	Resdience	Room
2	Mr. & Mrs. J. Vincent D,Oro	Havan, Cuba	2313A

142 GOVERNMENT EXHIBIT 35.

D'Oro J. Vincent and Wife 1919A
7 00 Havana Cuba 1-31-29 MR. 85

The Stevens
Guest Ledger Sheet
CFS—JA

Suspenses Account
D.M.

Weekly bill brought forward

This Account shows various entries in the ledger sheets from February 25 to 27, inclusive.

It also reads: Trans to Suspense Ledger.

The Stevens

GOVERNMENT EXHIBIT 36.

D'Oro J. Vincent & Wf 1919A
7 00 Havana Cuba 1-31-29 MR. 85 The Stevens
Guest Ledger Sheet

Weekly bill brought forward

This account shows various entries in the ledger sheets from February 18th to 24th, both inclusive. It is on the same form as Government Exhibit 35.

Weekly Bill Bal Fwd
The Stevens

GOVERNMENT EXHIBIT 37.

D'Oro J. Vincent & Wife 1919A
7 00 Havana Cuba 1-31-29 MR. 85 The Stevens
Guest Ledger Sheet

Balance Brought Forward from Sheet 1

This account shows various entries in the ledger sheets from February 16 to 17, both inclusive. It is on the same Form as Government Exhibits 35 and 36.

Weekly Bill Bal. Fwd
The Stevens

143 GOVERNMENT EXHIBIT 38.

D'Oro J. Vincent & Wf. 1919A
7 00 Havana Cuba 1-31-29 MR. 85 The Stevens
Guest Ledger Sheet

Weekly Bal Brot. Fwd.

This account shows various entries in the ledger sheets from February 7th to 16th, both inclusive. It is on the same Form as Government Exhibits 35, 36 and 37.

Amount forwarded to Sheet 2
The Stevens.

GOVERNMENT EXHIBIT 39.

~~2373-A~~

D'Oro J. Vincent & Wf. 1919A
7 00 Havana Cuba 1-31-/29 MR 85

The Stevens
Guest Ledger Sheet 31135 31136

This account shows various entries in the ledger sheets from January 31st to February 6th, both inclusive. It is on the same form as Government Exhibits 35, 36, 37 and 38.

Weekly Bill Bal. Fwd.

The Stevens.

GOVERNMENT EXHIBIT 40.

The Dallas Park Hotel and Apartments
Fort Dallas Park, Miami, Florida.

December 25, 1928.

Name	Residence	Room
Mr. & Mrs. Jack McGurn	Chicago Illinois.	7F

GOVERNMENT EXHIBIT 41.

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Thursday Jan 31, 1929

2313A	F.I.C.	De'Oro	93955-6	2 M	1.80

144

GOVERNMENT EXHIBIT 42.

The Pullman Company Ticket Agent's Office Diagram.

Train	Leave	Agent's Stop
9	10:25 P. M.	257.

From Chicago, Illinois, to Fort Myers, Florida, Friday January 25, 1929.
Lower Six "1371"
Compartment B. "292"

Below the written Numbers 1371 and 292, the written words "LaSalle Hotel" appear.

On reverse side is written:
lower 6 "Jax" Compartment B. "Jax" 2.

GOVERNMENT EXHIBIT 43.

Line 536
Car Name—Centarch
Car No. 257
Leaving Chicago 10:25 P.M.—1-25-29 Arriving Fort Myers 7:P.M. 1-27-29.

From	To	Berth	Passengers	Rate
Chicago	Jacksonville	Compartment B	2	$33.75
Chicago	"	Lowers 3 & 6	2	$12.00

GOVERNMENT EXHIBIT 44.

Government Exhibit 44 is in the same form as Government Exhibit 43. It is a continuation of the Pullman Report beginning on Exhibit 43.

GOVERNMENT EXHIBIT 45.

The Pullman Company Ticket Agent's Office Diagram
Car 40 Line 500
Train 8 Leave 12:30 P.M.
From New Orleans, La.
to Chicago, Illinois

January 30, 1929.

Drawing Room A on Jackson
De'Oro

On reverse side is stamped:
Drawing Room A, followed by the number 2.

145 GOVERNMENT EXHIBIT 46.

Line 500
Car Name Glen River
Car No. 40
Leave New Orleans, La. 12:30 P.M. January 30, 1929
Arriving Chicago, Illinois 9:30 A.M. January 31, 1929.

From	To	Berth	Passengers	Rate
Jackson	Chicago	BAA	3	$30.00

GOVERNMENT EXHIBIT 47.

This is a Hotel Register Sheet, dated January 18, 1928.

No.	Name	Residence		Room	
13	Mr. & Mrs. H Johnson	Chicago	C	1109	3

GOVERNMENT EXHIBIT 48.

Hotel McCormick 1109

Room 906.

Name H. Johnson & Wife Arrived 1/18 Rate 175.00

This sheet shows various entries from February 1st to 31st (both inclusive), 1928, being continued and forwarded to sheet designated as Government Exhibit 49.

GOVERNMENT EXHIBIT 49.

Hotel McCormick

Room 906.

Name H. Johnson & Wife Arrived 1/18/28. Rate 175.00

This sheet shows various entries from March 1st to 31, (both inclusive), 1928, being continued and forwarded to sheet designated as Government Exhibit 50.

GOVERNMENT EXHIBIT 50.

Hotel McCormick

N.A.

Room 906.

Name H. Johnson & Wife Arrived 1/18/28. Rate 175.00

This sheet contains various entries from March 1st to March 31st, (both inclusive), 1928, being continued on and forwarded to sheet designated as Government Exhibit 51.

146

GOVERNMENT EXHIBIT 51.

Hotel McCormick

Room 906.

Name H. Johnson & Wife Arrived 1/18/28. Rate 175.00

This sheet contains various entries from March 1st to March 31st, (both inclusive), 1928.

GOVERNMENT EXHIBIT 52.

1409
Room 906 Johnson H. & Wife 2 @ 115.00
1—18 $175.00

Month of	Arrive	Depart	Rate	Date	Credit
1	18	21	175.00	1/25	115
Extras				2-21	265.60
Out 3/21/28					

(Initial) R. Z.

GOVERNMENT EXHIBIT 53.

This Exhibit is a picture of a man and woman sitting in the sun, both in bathing suits.

GOVERNMENT EXHIBIT 54.

The Stevens.

1/31/29
6:10 P.M.

Transfer.

Mr. & Mrs. J. Vincent D'Oro.
From Room 2313A O.K. 23rd Floor
To Room 1919A O.K. 19th Floor.
2 Trunks P 20
books
g bag
clothing 3 bags

PLOWE
Clerk

GOVERNMENT EXHIBIT 55.

D Oro J Vincent & Wf. 2313A
7 00 Havana Cuba 1/31/29 MR 85
Room No. 2313 A

Clerk Z

Stamped on back
1/31 AM. 10:44 The Stevens
Central United Agency

147 GOVERNMENT EXHIBIT 56.

Louisville & Nashville Railroad
Train Baggage Report.

Train No. 5 Date 1/28/1929.
Delivered to Biloxi at Bellande

Check Number	From	Destination	Received at Station No.	Description
162021	F E C	727	608	WRT
22				

GOVERNMENT EXHIBIT 57.

Searboard Air Line Railway Company
Report of Baggage Transported.
Leaving Jacksonville, Fla. at 7 00 P.M. 1-27-1929
Arriving River Junction, Fla. at 5 00 P.M. 1/28/1929.
On Train 39, G. C. Thomson, Conductor
J. O. Scott, Train Baggagemaster.

	From	To	Check Number	Description of Baggage
5	St. Augustine, Fla.	Biloxi Miss	16-20-21	Wt.
6	" "	" "	16-20-22	"

GOVERNMENT EXHIBIT 58.

Louisville & Nashville Railroad Co.
Train Baggage Report.

Train No. 4 Date 1/28/1929.
Delivered to T B M P D No. 6 at Pensacola, Fla.
M. M. Alberson, T.B.M.

Check Number	From	Destination	Received at Station No.	Description
162021	F E C	Biloxi, Miss.	K 812	W R T
22	"	" "	"	"

148 GOVERNMENT EXHIBIT 59.

Louisville & Nashville Railroad Co.
Train Baggage Report.

Train No. 4 Date 1/28/1929.
Delivered at T B M P D No. 6 At Pensacola, Fla.
M. M. Alberson, T. B. M.

Check Number	From	Destination	Received at Station No.	Description
162021	F E C	Biloxi, Miss.	K 812	W R T
22	"	" "	"	"

GOVERNMENT EXHIBIT 60.

Louisville & Nashville Railroad Co.
Train Baggage Report.

Train No. 6 Date 1/28 1929.
Delivered to B M 5 At 16651
(Initials)
T B M

Check Number	From	Destination	Received at Station No.	Description
162022	F E C	Biloxi	16651	N T
21	"	"	"	"

GOVERNMENT EXHIBIT 61.

Louisville & Nashville Railroad Co.
Train Baggage Report.

Train No. 6 Date 1/28/1929
Delivered to B. M. 5 At 16651
(Initials)
T B M

Check Number	From	Destination	Received at Station No.	Description
162022	F E C	Biloxi	16651	N T
21	"	"	"	"

149 GOVERNMENT EXHIBIT 62.

Louisville & Nashville Railroad Co.
Train Baggage Report.

Train No. 5. Date 1/28/1929.
Delivered to Biloxi. At Bellande.

Check Number	From	Destination	Received at Station No.	T.B.M. Description
162021	F E C	727	608	W O D
22	"	"	"	"

GOVERNMENT EXHIBIT 63.

Atlantic Coast Line R. R.
IC, C of G, ACL
Via Birmingham and Albany.
Agent's (punched here) Stub
Not good for passage
Fare 38 96
A1752 Destination
Jacksonville, Fla.
Stamped on back:
19 Central 19
Station
Jan 25 '29

GOVERNMENT EXHIBIT 64.

Atlantic Coast Line R. R.
IC, C of G, ACL
Via Birmingham and Albany.
Agent's (punched here) Stub
Not good for passage
Fare 38 96
A1751
Destination
Jacksonville, Fla.
Stamped on back:
19 Central 19
Station
Jan 25 '29

150 GOVERNMENT EXHIBIT 65.

Atlantic Coast Line R. R.
IC, CofG, A. C. L.
Via Birmingham and Albany.
Agent's (punched Stub here)
Not good for passage.
Fare 38 96

A1753 Destination
Jacksonville, Fla.

GOVERNMENT EXHIBIT 66.

Name	Wants	From	To	Train	Date	Called	Edge Time	
DeOro	1 Dr	GPT	Chgo	P	1/30	1/29	4 05	P

GOVERNMENT EXHBIT 67.

Telephone Reservations

Office Called New Orelans City Date 1/29 Time 4 55 P

Date	Wants	Train	Name	From	To	Space	Car	Ticket
1/30	1 Dr	P	DeOro	Jax	Chgo	Dr A	40	

GOVERNMENT EXHIBIT 68.

CDT No. 1832 Jan 30
Destination Chicago, Ill. Car No. 6

No.	Space	Name	By	Date	Time
4	Upper Sec.				
	Lower	DeOro		1441	

151 GOVERNMENT EXHIBIT 70.

The Pullman Company ticket agents office diagram.
Car 6 Line 527
Train 1088 Leave 12 10 P.M.
From Gulfport, Miss.
To Chicago, Ill.
Day & Date Wednesday Jany 30 1929.

	Uppers	Lowers
4	3 seats to Jackson only	
	1441	1441
5	1 seat Jax	
	1440	

On reverse side:

4	3 seats	A/40 Jax
5	Any seat Jax.	A/40

GOVERNMENT EXHIBIT 71.

Advice Card

Biloxi—Gulfport Edgewater Park
Date Jan 30 1929
From Biloxi Transfer & Storage Co.
From Edgewater Gulf Hotel.
Owners' Name Room 616
Checked to Chicago Ill
Via I. C.
Checked on 3 Tickets Issued by I C
Form E F & P 10 Nos. 707-8-9
Check Nos. 584261-62-63

Checked by
J. Phillips, Agent.

GOVERNMENT EXHIBIT 72.

Illinois Central System Station Baggage Way-Bill.
Gulfport Station, 1/30 1929 Train No. 108

Destination	Check Numbers
Chicago	584262
"	584261

152 GOVERNMENTS EXHIBIT 73.

Edgewater Gulf Hotel No. 4141A

Store Room Requisition.

Date 1/28/1929.

Deliver from Storeroom to Arrival Department.

Description	Price
162021-22	200

Paid V. E. Leehur
5 40 P.M. 1/28/29

GOVERNMENT EXHIBIT 74.

Arrival of Baggage 1/28/29.

Name	Room	Route	Pieces	Check Numbers	Time	Transfer Co.	Porter	Transfer Charges
DeOro	616	LN	2	162021-22	12 25 PM	Biloxi	Haroll	2 00

Amt. Chgd to Guests	Amt. Paid in cash
2.50	.50

GOVERNMENT EXHIBIT 75.

No. 13763 Edgewater Gulf Hotel
Biloxi, Miss.

In Account with	3-D Oro V & Mrs.	2-30.00	616
No. 13762	1-28-29 Chgo	See 617	2 Wks.

This sheet shows various items from January 28th to January 31st, both inclusive, 1929, and is stamped paid on Jan. 28, 1929, by the Edgewater Gulf Hotel Co. G.

On back: Jan 30 10 46 AM 1929.

GOVERNMENT EXHIBIT 76.

Edgewater Gulf Hotel
No. 13762. Biloxi, Miss.

	3-D Oro V. & Mrs.	2-30.00	616
	1-28-29 Chgo	See 617	2 Wks.

In Account with No. 13762.

This sheet shows various items from Jan. 28 to Jan. 31 (both inclusive), 1929, and is stamped paid on Jan. 28, 1929 by the Edgewater Gulf Hotel Co. G.

On Back: Jan 30 10 46 A.M. 1929.

153 GOVERNMENT EXHIBIT 77.

Address to Which Bill Should Be Mailed

.....

.....

(The above to be filled in with typewriter)
Signature
Vincent D'Oro
Business Phone Residence Phone
Monro 2222 Hay. 1344
Date
Name

GOVERNMENT EXHIBIT 78.

Account No. 13762 Date 1/28/29
No. 10650. Room No. 616 Rate 30 00 Clerk C.
Mr. & Mrs Vincent D'Oro see 617
Name Mr. & Mrs. Vincent D'Oro Trunks .....
City Chicago Ill. Suit Cases 3.
Street Congress Hotel Bags
Remarks Congress Hotel
Guest advises that Room is rented
to and inclusive 2 Wks.
Edgewater Gulf Hotel
B.

GOVERNMENT EXHIBIT 79.

No. 10643 Account No. 13763 Date 1/28/29
Room No. 617 Rate 15 00 Clerk C
Anthony D'Oro See 616.
Name Mr. Anthony D'Oro Trunks
City Chicago Ill Suit Cases 1
Street Congress Hotel Bags
Remarks Congress Hotel
Guests advised that Room is rented
to and inclusive 2 Wks.
Edgewater Gulf Hotel
B

154 GOVERNMENT EXHIBIT 80.

Post card of Illinois Central Railroad, with printed words:

"On the route of the 'Floridan' de luxe to Miami and 'The Seminole,' fast-time, on-time, all-steel trains between Chicago, St. Louis and Florida."

"Mr. Vincent D'Oro you are very sweet to say such kind things. I love you dear."
"Mr. D'Oro
Com B
257 Car
Seminole, limited."

GOVERNMENT EXHIBIT 81.

Pullman Company Ticket Agent's Office Diagram
Car. 40. Train 8 Leave 9 Or P.M.
From New Orleans to Chicago Ill. 1/30/1929.

This diagram, which is on Form similar to Government Exhibit 70, shows line through all spaces indicated on the diagram, including space marked "Drawing-Room A."

Government Exhibit 82 not offered in evidence.

GOVERNMENT EXHIBIT 83.

Line 527
Car Name Lake Duane
Car No. 6 Leaving Gulfport
12 10 P M. 1-30-29
Arriving Chicago
9 30 A.M. 1-31-29.
Conductors: P. L. Carter R. Sayer H. Watt.

On reverse side:

From	To	Passg'rs seat	Accom seats	Rate
Gulfport	Jax	1	1	1 20
"	"	3	3	3 60
"	"	1	1	1 20

155 GOVERNMENT EXHIBIT 84.

Thanks for the information but I have been there already this afternoon she love me up so much that I felt like tearing the house down but there was nothing doing. Well you cant blame the girl she is sick you know what I mean she is using Kotez. So if you think it is O. K. you will have to write to me and explain how I can give this young lady a wiggle when she is using Kotez. But if you have anyone else in mind as good as her reply at once as I am get heated up.

JACK.

GOVERNMENT EXHIBIT 85.

I'm very sorry I can not recommend anyone else as hot as she. She is the best one I know. And besides I happen to know she loves you and is true to you. So I would not put you in with anyone else even if I knew some one. If this girl I speak of is sick, why don't you talk to her about it. You say you were over there this afternoon and she loved you so much you felt like tearing the house down and in the next breath you ask me to find you some one else. Do you mean to convey that anyone would do. I thought you were very particular and I'm sure she thinks so too. Now don't disappoint her. Be a good sweet boy and don't cheat on her. For as I said before she loves you dearly.

156 GOVERNMENT EXHIBIT 86.

Hello Honey:

I have finally decided to answer your note. You asked me to say once in a while that I love you. Honey do I have to say it in words. You know I do. And How. I am getting so that when I am not with you for a minute I long for your presence. You might think it is the bunk but it is the truth. (So help me God) Well I haven't much more to say other than I am very sorry that you are sick and hope you a speedy recovery. xxxxxxxxxTrillions of them.

Ever Yours,

JACK MCGURN.

P.S. Say Pally do you happen to know where a fellow can get Layd. Please answer soon.

Reverse Side of Exhibit 86.

Mrs. Louise McGurn
453 N. W. Third St.
Miami, Florida
U. S. A.

GOVERNMENT EXHIBIT 87.

Government Exhibit 87 is a picture of six people. Seated from left to right in beach chairs are a woman, a man, a woman, a man. These four are dressed in bathing suits. A man is standing between the 2nd and 3rd chairs and another is standing between the 3rd and 4th. Both of these men are dressed in civilian clothes.

157 GOVERNMENT EXHIBIT 88.

Government Exhibit 88 is a picture of a man in a bathing suit standing on the sand in front of a palm tree.

GOVERNMENT EXHIBIT 89.

Statement of Miss Louise Rolfe.

Made in the office of Commissioner John Stege, Detective Bureau, Chicago, Illinois, on Wednesday, February 27, 1929, at 4:20 P.M. Present: Mr. David D. Stansbury, Assistant State's Attorney; Mr. Harry S. Ditchburne, Assistant States Attorney; Mr. Walker Butler, Assistant States Attorney; Commissioner John Stege; Lieutenant William Cusack; F. A. Sheeder, Shorthand Reporter (Book 1254). (Transcript of statement).

My name is Louise Rolfe. Right now I am living no place; have been living at Stevens Hotel. My right name is Louise McGurn. I came into the Detective Bureau about an hour ago. Before that time I had been living at the Stevens Hotel a month. I don't remember the exact date. Prior to the time I moved to the Stevens Hotel we had been in Miami and Biloxi, Mississippi. We went to the Stevens Hotel immediately upon our return to Chicago. I couldn't tell you when we left Biloxi; it was about three days before we moved in the Stevens. We were at Biloxi after we went to Miami. We did not go directly from Miami to Biloxi but made stops between.

We went from Miami to Chicago, and from Chicago back to Jacksonville, and from Jacksonville to Biloxi, and from Biloxi to Chicago. That was about a month ago.

I am married and my husband's name is Jack. Was married seven years ago, in 1922. I don't remember the month or the date. The marriage took place in Chicago, in the City Hall. We were married by a judge. I don't remember the name of the judge.

158 After I returned to Chicago from Miami, I went back to Jacksonville and remained there an hour, and next went to St. Augustine, and remained there four hours. I then went to Biloxi and remained there three days. In Biloxi we stopped at the Edgewater Gulf Hotel and were registered under the name of D'Oro. I think the first name was J. Vincent. There were three in our party at the Edgewater Gulf Hotel, myself, my husband, and my brother-in-law. His name is Tony, and he is Jack's brother. I can't tell the date when we checked out of Edgewater Gulf but we left Biloxi immediately for Chicago. We left around noon and got into Chicago about nine o'clock the next morning over the Illinois Central, the fast train that charges $7.00 extra for riding. We boarded the train at Gulfport and occupied Drawing Room A. I think it was on car 200. On our arrival in Chicago that morning at nine o'clock, the first place that I went was to my mother's home, 634 Addison Street, and remained there that afternoon and then went to the Stevens Hotel.

We checked into the Stevens Hotel the same day we returned from Biloxi, and that was the day following the day we left Biloxi. Upon arrival at the Stevens Hotel we were first assigned one room but didn't like it so we had it changed after an hour. We then got room 1919-A, and have been there continuously until today. We haven't occupied any other room at the Stevens Hotel nor in any other hotel, but have lived very continuously in room 1919-A since we returned from Biloxi, and by that I mean just about twenty-four hours a day. We did not go out to shows or dinner or something of that sort except a couple of movies. The first week we were there we went to the Chicago Theathre and saw a picture. We didn't go for automobile rides and we did not wander around town. We went to a couple of shows and that was all. We had our meals served in the room. We saw "Diamond Lil," a musical show, about the first week we

159 were here, at the New Appollo at Randolph and Clark Streets. We went to the Roosevelt but I don't recall

what I saw there. That is all the theathres I recall that we went to.

My husband is not working at the present time and I couldn't say the last time that he was employed. We have not had any visitors at the Stevens. There has not been anybody to see us during the three or four weeks that we have been there. Nobody has been there to see my husband. I have been with my husband during all of the time that I have been there. Yesterday I went down stairs for a half hour to get my hair marcelled, but outside of that I have not gone out alone and have never been outside the Hotel without my husband. He has not gone out at any time without me. We have not eaten meals except at the Stevens. We had our meals served in our room as a general rule. Once or twice we ate in the main dining room of the Stevens Hotel but not in any of the small dining rooms and in no other hotels. We spent the entire day in our room together and received no visitors or anybody else. We have done that other places where we have lived. We usually stayed much to ourselves all day and all night long. We stay right in one room all the time and have no visitors. We had card games just between ourselves and we didn't have anybody else there playing a game of cards with us.

We were at Miami and came back from Miami to Chicago and then went to Biloxi. We went to Jacksonville and stopped at Jacksonville a while before we came back to Chicago. We came back to Chicago just before we checked in at the Stevens Hotel. We had been back in Chicago before we went to Biloxi when we came back and stayed one day. We did not come through from Miami to Biloxi, we went from Miami to Chicago and then from Chicago to Biloxi. On that occasion we stopped at Chicago, at the LaSalle. I don't recall those dates. We used the name of Mr. and Mrs. Vincent D'Oro. That was about a week before we checked in at
160 the Stevens Hotel. We were in Biloxi only three days.

Mr. McGurn and I went South three days before Christmas in the first place—about December 22nd, and we went directly to Miami and stayed there until we came back to Chicago by way of Jacksonville. I don't know the name of the train that we took coming to Chicago. I think it must have been the Seminole. Allowing three days for being down in Biloxi, and figuring that I got into the Stevens about the 29th of January, it would be some time during the week between the 18th and 26th that we were in Chicago when we

registered as Mr. and Mrs. Vincent D'Oro at the La Salle Hotel.

Before I went to Florida the first time I lived at the Lexington Hotel about three or four months, and before that at the Metropole about a year. During the time I lived at Metropole he would not spend the entire day with me from sunrise to sunset. Some days he would go out and we didn't make prisoners of ourselves at either the Lexington or the Metropole.

I never asked him at any time what he did for a living. I don't remember where I met him it has been too long ago. I met him three or four months before I married him. His name was always Jack McGurn, and that is the name I have always known him by. I don't know if that was the name I married him under. I did not think it was peculiar to be living at the Stevens Hotel under another name than McGurn, and I did not ask him about that. I don't know when I first knew that we were going to use another name than McGurn. We used that name at the LaSalle Hotel and at the Biloxi Hotel. I don't recall what name we used at the Metropole Hotel. I have lived with McGurn seven years.

161 GOVERNMENT EXHIBIT 90.

Additional Statement of Miss Louise Rolfe Made in the office of Commissioner John Stege, Detective Bureau, Chicago, Illinois, on Thursday, February 28, 1929, at 3:00 o'clock P. M. Present: Mr. Harry S. Ditchburne, Assistant State's Attorney; Mr. Walker Butler, Assistant State's Attorney; Lieutenant William Cusack; Police Matron; F. A. Sheeder, Shorthand Reporter (Book No. 1254). (Transcript of statement)

Jack was in that hotel room over there in 1919-A with me all February 12th, Lincoln's Birthday. While Jack was stopping with me at the Stevens Hotel we went to my mother's the first day we came back from Biloxi and two times I think after that or three times altogether. I would sign checks over there at the hotel occasionally. I signed more than one. I would sign for Jack if the waiter came up when he was taking a bath.

162 GOVERNMENT EXHIBIT 91.

Statement of Jack McGurn. Made in Room 1920-A Stevens Hotel, Chicago, Illinois, on Wednesday, February 27, 1929, at 1:15 P.M. Present: Mr. Harry S. Ditchburne, Assistant State's Attorney; Chief John Egan; Commissioner John Stege; Lieutenant William Cusack; F. A. Sheeder, Shorthand Reporter (Book 1254). (Transcript of statement).

I am Jack McGurn. I have no other name. I live at the Stevens Hotel. My residence has been Chicago for a number of years. I was born here. I'M 26 years old. I have been in the Stevens Hotel since the 29th of January. I came from Biloxi. I don't remember what date of the week it was. On the 29th I got in about 11 o'clock in the morning. Have been stopping at this hotel on and off ever since. Have been in this hotel every night since January 29th with this lady. I am positive we have not had any visitors at any time either to see me or this lady that is with me. I have owned that Colts automatic pistol about two years. I bought it in a crap game in a poolroom at Desplaines and Congress for $25.00. The Smith & Wesson revolver .32 long cartridge is my pistol. I have owned it two years. I got both guns at the same time. On January 29th in the evening if I was not in the hotel I was on the train. I came into the hotel on the 30th or may be the 29th. I came into Chicago on the Panama Limited from Gulf Port, Mississippi, arriving in Chicago at 9 o'clock in the morning supposedly. I was in Biloxi about a week. I had been out of Chicago since a week before Christmas. This lady has been with me all the time since about
163 December 18th when we went down South. Before going down there I lived at the Lexington Hotel for about three years steadily under the name of Jack McGurn. Here I am using the name D'Oro. My first name is James. I'm registered here under the names of James D'Oro and wife. I was not registered that way at the Lexington. The lady was with me at the Lexington. I have been living with her about three years. I am married to her. Since the day I arrived here I haven't been out of my room. From the time I checked in here whether it was the 29th or 31st— I don't exactly remember the date, but from the time we checked in here, what the records read downstairs, I haven't been out of my room for any purpose whatever, not even to go out and buy a package of cigarets.

164 GOVERNMENT EXHIBIT 92.

Florida East Coast Railway Co.
Flagler System
Train Baggage Waybill

From Jax. To 37 Train No. 29

Baggage Master Rooney 1-27-29

From	Destination	Initial	Check Numbers	Remarks
Jax	St. Aug.	F.E.C.	307913	
			307912	

GOVERNMENT EXHIBIT 93.

Florida East Coast Railway Co.
Station Baggage Waybill

Train No. 34 From St. Augustine 1-27-29

W. A. Hughey Baggage Agent

From	Destination	Des. of Articles	Condition	Check Nos.
St. Aug.	Biloxi Miss.	TK.	O. K.	162021
				162022

GOVERNMENT EXHIBIT 94.

Exhibit 94 is on the same form as Exhibit 92.

Florida East Coast Railway Co.
Train Baggage Waybill

From 242 To 0.

Baggage Master Tapey 1-27-29

From	Destination	Initial	Check Numbers	Remarks
St. Aug.	Biloxi, Miss.	F.E.C.	162022	
			162021	

165 GOVERNMENT EXHIBIT 95.

The Stevens

In-Coming Baggage Date 1-31-29

Room	Where From	Time	Trunk	Baggage	Golf Bag	Porter
2313 A	I. C. Parcel checks 584263 53852-3 53854-5	11:00		4	1	4
"	P93955-6 (53852-345) (D'Oro)	11:45	2			"

GOVERNMENT EXHIBIT 96.

Jacksonville Terminal Company
Baggage Agency
Check Sheet Outbound Baggage

Checkman W. E. Hines Date January 27, 1929
A. M.

Check Received			Check Issued		
Initial	Number	Destination	Initial	Number	Time
I.C.	18325	St. Augustine	F.E.C.	307912	7:50 AM
"	18326	St. Augustine	F.E.C.	307913	7:50 AM

Ticket or Pass	
From	Number
C.D.	34725-67
	3

GOVERNMENT EXHIBIT 97.

Florida East Coast Railway Company
Train Baggage Waybill

From Jax To 37

Baggage Master Rooney Date 1-27-29

From	Destination	Initial	Check Numbers	Remarks
Jax	St. Aug.	F.E.C.	307913	TK
"	"		307913	S.T.K.

166 GOVERNMENT EXHIBIT 98.

Jacksonville Terminal Company.
Baggage Inventory

Jan. 27, 1929

C O D Number
18325
18326

GOVERNMENT EXHIBIT 99.

Atlantic Coast Line Railroad Company
Train Baggage Waybill.

Delivered To House At Jacksonville, Florida
From Train No. 93 Date 1-27-29 Tabour Baggage Master

Where Article Received	Check or Tag Reads From	To	Check Number	Description of Article
7	Chgo.	Jaxville	18326	STR

Condition Stacked

On the reverse side of this exhibit appear printed instructions to Baggage Masters.

GOVERNMENT EXHIBIT 100.

Exhibit 100 is on the same form as Exhibit 99.

Atlantic Coast Line Railroad Company
Train Baggage Waybill
For Baggage, Milk, Newspapers, Co. Material, Etc.

Delivered to House At Jacksonville Fla. Train No. 93
Date 1-27, 1929 Tabour Baggage Master

Article Received	Check or Log Reads From	To	Check No.	Description of Article
17	Chgo.	Jaxville	18325	STR

Condition stacked

Received Articles As Billed
Agent or Baggage Master

167 GOVERNMENT EXHIBIT A.

Florida East Coast Railway Company
Baggage Agency
Check Sheet Outbound Baggage

Date Jan. 27, 1929

Check Received			Check Issued		Time	Ticket or Pass
Initial	Number	Destination	Initial	No.	From	Number
F.E.O.	307912					
	307913	Biloxi, Miss.	F.E.O.	162021	L	1-1
"		"	"	162022	15931	-3-2

(There are certain indistinguishable figures with evidently what is meant to be the letters T. K.

168 The Government Here Rested Its Case.

Mr. Hamlin: At the close of the evidence for the government, I make a motion for a finding for the defendants. I make the customary motion at this time. There is no use to argue it, I take it?

The Court: It will be overruled. Exception allowed.

Mr. Hamlin: Then, your Honor, we have considered this case very carefully, and neither one of the defendants, in our opinion, are competent witnesses and we do not think from the testimony adduced so far that the Government has made out a case under the Act. And so the defense rests.

The Court: Defense rests?

Mr. Hamlin: Yes, sir.

The Defendants Here Rested Their Case.

The Court: Then you want to renew your motion?

Mr. Hamlin: Yes, sir.

The Court: At the close of all the evidence?

Mr. Hamlin: Yes, sir.

The Court: Motion for a directed verdict overruled. Exception allowed.

169 The foregoing contains all the evidence introduced on the trial of this cause.

And when the Judge rendered his verdict, the defendants Jack Gebardi and Louise Rolfe moved the court to set aside the verdict and to grant a new trial; but the court denied said motion; to which ruling of the court the said defendants then and there excepted.

And thereupon, said defendants moved the court in arrest of judgment; but the court denied said motion; to which ruling of the court said defendants then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the said defendants, Jack Gebardi and Louise Rolfe present this their bill of exceptions within the time allowed by the court, praying that the same be signed, sealed and filed in accordance with law; which is now done accordingly this 17th day of September, A. D. 1931.

WALTER C. LINDLEY
Judge.

Memorandum:—This bill of exceptions was presented to me this 17th day of September A. D. 1931.

WALTER C. LINDLEY
Judge.

O. K.

DANIEL ANDERSON
Assistant U. S. Attorney.

170 And afterwards, to wit, on the 21st day of July A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Petition for Appeal", same being in the words, and figures following, to wit:—

171 * * (Caption) * *

To the Honorable Judges of Said Court:

Now Comes the petitioner Jack Gebardi, by his attorneys Harry F. Hamlin and Howard F. McCormick, and says that on the 21st day of July, A. D. 1931, at the July Term of the District Court of the United States for the Northern District of Illinois, Eastern Division, by the consideration of said Court, in a certain criminal case pending in the said Court to-wit: a certain indictment against the defendant above named, and the petitioner for a violation of Sec. 2, Act June 25, 1910 Mann Act. White Slave Traffic Act, being a criminal cause No. 20592, in that court the defendant was sentenced to serve two years in the U. S. Penitentiary at Leavenworth, Kansas; said judgment was rendered on a finding of guilty by said Court without a jury, against said defendant.

In the rendition of said judgment and sentence of the Court

in the proceedings in said cause, prior thereto, certain manifest errors have intervened to the great prejudice and injury of said defendant, which errors are specified in detail in the assignment of errors which is filed herewith.

172 Wherefore the defendant Jack Gebardi, in the above entitled cause feeling himself aggrieved by the finding of the Court and the judgment and sentence of the Court rendered thereon and entered herein, comes now by his attorneys, and petitions this Court praying for an order allowing him to prosecute an appeal from the United States District Court, Northern District of Illinois, Eastern Division to the United States Circuit Court of Appeals for the 7th Circuit for correcting errors so complained of and for reversal of the said judgment and sentence; that the said appeal may be a Supersedeas in accordance with the laws of the United States made and provided.

And the defendant Jack Gebardi, presents herewith his assignment of errors in accordance with the rules of the said United States Court of Appeals.

And the petitioner prays that a citation in due form of law may issue requiring the defendant in error to appeal in the United States Court of Appeals for the 7th Circuit and then and there to make answer to the assignment of errors made by your petitioner upon the records of the proceedings in said cause and your petitioner will ever pray.

JACK GEBARDI
Petitioner.

21. 173 And afterwards, to wit, on the 21st day of July, A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Petition for Appeal", same being in the words and figures following, to wit:—

174 * * (Caption) * *

To the Honorable Judges of Said Court:

Now Comes the petitioner, Louise Rolfe, by her attorneys Harry F. Hamlin and Howard F. McCormick, and says that on the 21st day of July A. D. 1931, at the July Term of the District Court of the United States for the Northern District of Illinois, Eastern Division, by the consideration of said Court, in a certain criminal case pending in the said court

to-wit: a certain indictment against the defendant above named, and the petitioner for a violation of Sec. 2, Act June 25, 1910 Mann Act. White Slave Traffic Act, being a criminal cause No. 20592, in that Court the defendant was sentenced to serve four months in the County Jail of Cook County, Illinois; said judgment was rendered on a finding of guilty by said Court without a jury, against said defendant.

In the rendition of said judgment and sentence of the Court in the proceedings in said cause, prior thereto, certain manifest errors have intervened to the great prejudice and injury of said defendant, which errors are specified in detail in the assignment of errors which is filed herewith.

Wherefore the defendant Louise Rolfe, in the above entitled cause feeling herself aggrieved by the finding of the Court and the judgment and sentence of the Court rendered
175 thereon and entered herein, comes now by her attorneys, and petitions this Court praying for an order allowing her to prosecute an appeal from the United States District Court, Northern District of Illinois, Eastern Division to the United States Circuit Court of Appeals for the 7th Circuit for correcting errors so complained of and for reversal of the said judgment and sentence; that the said appeal may be a Supersedeas in accordance with the laws of the United States made and provided.

And the defendant, Louise Rolfe, presents herewith her assignment of errors in accordance with the rules of the said United States Court of Appeals.

And the petitioner prays that a citation in due form of law may issue requiring the defendant in error to appear in the United States Court of Appeals for the 7th Circuit and then and there to make answer to the assignment of errors made by your petitioner upon the records of the proceedings in said cause and your petitioner will ever pray.

LOUISE ROLFE
Petitioner.

176 And afterwards, to wit, on the 21st day of July A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause "Assignment of Errors", same being in the words and figures following, to wit:—

21. 177 * * (Caption) * *

ASSIGNMENT OF ERRORS.

Now comes Jack Gebardi the defendant, by his attorneys Harry F. Hamlin and Howard F. McCormick, on this 21st day of July, 1931 and says that the judgment entered in the above cause on the 21st day of July, 1931 is erroneous and unjust and that in the records and proceedings of the above entitled matter, there are manifest errors, in this to wit:

1) That the matters charged in the indictment against the defendant do not constitute a crime by the common law or under any statute of the United States or State of Illinois.

2) That the testimony, tending to prove said alleged crime which was given before the Honorable Judge, do not constitute a crime by common law or under any statute of the United States.

3) The Court erred in rendering a verdict against the evidence.

4) That the judgment and verdict is contrary to the law of the case.

5) The judgment and verdict was not supported by the evidence.

6) The Court erred in finding the defendant guilty.

7) The Court erred in holding that the government had proved its case.

8) The Court erred in admitting certain evidence against the defendant over the objections of Counsel for the defendant.

178 9) That the District Court of the United States, Northern District of Illinois, erred in not discharging the Defendant.

Wherefore, the defendant, Jack Gebardi prays that the Judgment of the District Court of the Northern District of Illinois, Eastern Division thereof, be reversed and discharged, and he will ever pray.

JACK GEBARDI

179 (Endorsed) * * (Caption) * * Assignment of Errors Filed Jul 21 1931 at ..... O'clock .....M. Charles M. Bates, Clerk.

180 And afterwards, to wit, on the 21st day of July A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause "Assignment of Errors", same being in the words and figures following, to wit: Filed 1931

181 * * (Caption) * *

ASSIGNMENT OF ERRORS.

Now comes Louise Rolfe the defendant, by her attorneys Harry F. Hamlin and Howard F. McCormick, on this 21st day of July, 1931 and says that the judgment entered in the above cause on the 21st day of July, 1931 is erroneous and unjust and that in the records and proceedings of the above entitled matter, there are manifest errors, in this to wit:

1) That the matters charged in the indictment against the defendant do not constitute a crime by the common law or under any statute of the United States or State of Illinois.

2) That the testimony, tending to prove said alleged crime which was given before the Honorable Judge, do not constitute a crime by common law or under any statute of the United States.

3) The Court erred in rendering a verdict against the evidence.

4) That the judgment and verdict is contrary to the law of the case.

5) The judgment and verdict was not supported by the evidence.

6) The Court erred in finding the defendant guilty.

7) The Court erred in holding that the government had proved its case.

8) The Court erred in admitting certain evidence against the defendants over the objections of Counsel for the defendant.

182 9) That the District Court of the United States, Northern District of Illinois, erred in not discharging the Defendant.

Wherefore, the defendant, Louise Rolfe prays that the judgment of the District Court of the Northern District of Illinois, Eastern Division thereof, be reversed and discharged, and she will ever pray.

LOUISE ROLFE

183 (Endorsed) * * (Caption) * * Assignment of errors Filed Jul 21 1931 at ..... O'clock .....M. Charles M. Bates, Clerk.

25. 184 And afterwards, to wit, on the 25th day of August A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause, "Amended Assignment of Errors", same being in the words and figures following, to wit:—

185 * * (Caption) * *

AMENDED ASSIGNMENT OF ERRORS.

Come now plaintiffs-in-error in the indictment herein described as Jack Gebardi, otherwise called Jack McGurn, otherwise called Jim Vincent D'Oro, and Louise Rolfe, and by their attorney Harry F. Hamlin, Esq., make and file this their joint and several Assignment of Errors and respectfully show that the learned District Court erred to their prejudice and to the prejudice of each of them, said plaintiffs-in-error, as follows:

As to the First Count.

I. The learned District Court erred (A) in overruling motion made on behalf of plaintiffs-in-error for a finding for them at the close of the evidence for the Government to which due exception was taken (S. M. p. 433); and (B) in denying their motion for a directed verdict after the case had closed, to which denial plaintiffs-in-error, as defendants below, duly excepted (S. M. pp. 434, 454).

II. The first count of the indictment did not and does not allege facts sufficient to constitute the crime of conspiracy therein attempted to be charged, in that the acts
186 therein alleged to have been jointly committed by plaintiffs-in-error constitute a concert of action or plurality of agency essential to complete the offense and therefore could not be made the basis of a charge of conspiracy between planitiffs-in-error to enable them to have sexual intercourse with each other.

III. Assuming but not conceding that the testimony offered in support of the first count of the indictment establishes anything, then it was that plaintiffs-in-error agreed to and did commit adultery, an offense which necessarily required their joint act, and therefore it could not and did not constitute conspiracy; an agreement between them hav-

ing for its ultimate purpose that they commit adultery by sexual intercourse one with the other did not and could not constitute the offense of conspiracy against the United States; therefore the evidence at the trial did not establish the offense of conspiracy attempted to be pleaded in the first count of the indictment and plaintiffs-in-error joint and several conviction under the first count of the indictment was against the evidence and the law.

IV. The conviction of plaintiffs-in-error jointly and severally of the offense attempted to be charged or charged in the first count of the indictment was against the weight of evidence and against the law.

(A) The Government failed to prove beyond a reasonable doubt the agreement to transport plaintiff-in-error Louise Rolfe as and for the purposes in the first count of the indictment set forth.

(B) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe boarded a car in the City of Chicago, State of Illinois, on a railroad bound for the State of 187 Florida as in the first count of the indictment set forth.

(C) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe traveled together through the Eastern Division of the Northern District of Illinois on a car bound from the City of Chicago to Miami, or traveled together from Chicago to Miami, as in the first count of the indictment set forth.

(D) The Government failed to prove beyond a reasonable doubt that any immoral purpose was formed or intended by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe, or either of them, before they or either of them crossed the State of Illinois for and enroute to a place in the State of Florida, as in the first count of the indictment set forth.

(E) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe had sexual intercourse with each other outside the State of Illinois as the result of a preconceived plan or intention, or in furtherance of a preconceived plan or intention so to do formed prior to their leaving the State

of Illinois or prior to their arrival at the destination, as and in the first count of the indictment charged.

(F) The Government failed to prove beyond a reasonable doubt the transportation in the first count of the indictment charged.

(G) The Government failed to prove beyond a reasonable doubt the sexual intercourse in the first count of the indictment charged.

188 (H) The Government failed to prove beyond a reasonable doubt that any immoral purpose was formed by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe before the state line of Illinois was crossed at the times and in the manner in the first count of the indictment set forth.

V. The learned District Court erred in receiving testimony of Government's witness B. B. White (S. M. pp. 53-57) as the same was irrevelant, immaterial and incompetent and grossly prejudicial to both plaintiffs-in-error inasmuch as the witness' testimony related to alleged acts of and conversations by and/or with the several plaintiffs-in-error after the completion of the alleged conspiracy in the first count of the indictment charged and in no way in furtherance thereof; and in so far as the witness testified to acts of and conversations by or with plaintiff-in-error Rolfe the testimony was incompetent and immaterial and grossly prejudicial to plaintiff-in-error McGurn and not in any way binding upon him upon the ground that it was testimony as to acts done and statements made by plaintiff-in-error Rolfe after the completion of the alleged conspiracy and therefore binding, if on anybody, only on plaintiff-in-error Rolfe and in no way in furtherance of the alleged conspiracy; and in so far as the witness' testimony related to acts and statements by and conversations with plaintiff-in-error McGurn they were irrelevant, immaterial and incompetent as acts and conversations after the completion of the alleged conspiracy in the first count of the indictment charged, not in furtherance thereof and in no way binding upon plaintiff-in-error Rolfe; plaintiffs-in-error jointly and severally suggesting to the Court that if there be doubt that the record discloses objection

189 or exception taken taken sufficient to raise the questions presented by this assignment of error, then plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to plaintiffs-in-error and

each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

VI. The learned District Court erred in receiving testimony of Government's witness J. I. Brown (S. M. pp. 57-59) as the same was irrelevant, immaterial and incompetent and grossly prejudicial to both plaintiffs-in-error inasmuch as the witness' testimony related to alleged acts of and conversations by and/or with the several plaintiffs-in-error after the completion of the alleged conspiracy in the first count of the indictment charged and in no way in furtherance thereof; and in so far as the witness testified to acts of and conversations by or with plaintiff-in-error Rolfe the testimony was incompetent and immaterial and grossly prejudicial to plaintiff-in-error McGurn and not in any way prejuing upon him upon the ground that it was testimony as to acts done and statements made by plaintiff-in-error Rolfe after the completion of the alleged conspiracy and therefore binding, if on anybody, only on plaintiff-in-error Rolfe and in no way in furtherance of the alleged conspiracy; plaintiffs-in-error jointly and severally suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to plaintiffs-in-error and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

190 As to the Second Count.

VII. The learned District Court erred (A) in overruling motion made on behalf of plaintiffs-in-error for a finding for them at the close of the evidence for the Government to which due exception was taken (S. M. p. 433); and (B) in denying their motion for a directed verdict after the case had closed, to which denial plaintiffs-in-error, as defendants below, duly excepted (S. M. pp. 434, 454).

VIII. The second count of the indictment did not and does not allege facts sufficient to constitute the crime of conspiracy therein attempted to be charged, in that the acts

therein alleged to have been jointly committed by plaintiffs-in-error constitute a concert of action or plurality of agency essential to complete the offense and therefore could not be made the basis of a charge of conspiracy between plaintiffs-in-error to enable them to have sexual intercourse with each other.

IX. Assuming but not conceding that the testimony offered in support of the second count of the indictment establishes anything, then it was that plaintiffs-in-error agreed to and did commit adultery, an offense which necessarily required their joint act, and therefore it could not and did not constitute conspiracy; an agreement between them having for its ultimate purpose that they commit adultery by sexual intercourse one with the other did not and could not constitute the offense of conspiracy against the United States; therefor the evidence at the trial did not establish the offense of conspiracy attempted to be pleaded in the second count of the indictment and plaintiffs-in-error joint and several conviction under the second count of the indictment was against the evidence and the law.

X. The conviction of plaintiffs-in-error jointly and severally of the offense attempted to be charged or charged in the second count of the indictment was against the weight of evidence and against the law.

191 (A) The Government failed to prove beyond a reasonable doubt the agreement to transport plaintiff-in-error Louise Rolfe as and for the purposes in the second count of the indictment set forth.

(B) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe boarded a car in the City of Gulfport, State of Mississippi, on a railroad bound for the State of Illinois, as in the second count of the indictment set forth.

(C) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe traveled together from the City of Gulfport, State of Mississippi, into and through the Eastern Division of the Northern District of Illinois, to the City of Chicago, State of Illinois, or traveled together from Gulfport, Mississippi, to the City of Chicago, State of Illinois, as in the second count of the indictment set forth.

(D) The Government failed to prove beyond a reasonable

doubt that any immoral purpose was formed or intended by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise, Rolfe, or either of them, before said plaintiffs-in-error or either of them crossed the State of Mississippi for and en route to the City of Chicago, State of Illinois, as in the second count of the indictment set forth.

(E) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe had sexual intercourse with each other outside the State of Mississippi as the result of a preconceived plan or intention, or in furtherance of a pre-
conceived plan or intention so to do formed prior to their
192 leaving the State of Mississippi or prior to their arrival
at the destination, as and in the second count of the indictment charged.

(F) The Government failed to prove beyond a reasonable doubt the transportation in the second count of the indictment charged.

(G) The Government failed to prove beyond a reasonable doubt the sexual intercourse in the second count of the indictment charged.

(H) The Government failed to prove beyond a reasonable doubt that any immoral purpose was formed by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe before the state line of Mississippi was crossed at the times and in the manner in the second count of the indictment charged.

XI. The learned District Court erred in receiving in evidence, over and subject to objection of plaintiffs-in-error, Exhibits 45 and 46 and each of them (S. M. pp. 161-167).

As to the Third Count

XII. The learned District Court erred (A) in overruling motion made on behalf of plaintiffs-in-error for a finding for them at the close of the evidence for the Government to which due exception was taken (S. M. p. 433); and (B) in denying their motion for a directed verdict after the case had closed, to which denial plaintiffs-in-error, as defendants below, duly excepted (S. M. pp. 434, 454).

XIII. The third count of the indictment did not and does

not allege facts sufficient to constitute the crime of con-
193 spiracy therein attempted to be charged, in that the acts therein alleged to have been jointly committed by plaintiffs-in-error constitute a concert of action or plurality of agency essential to complete the offense and therefore could not be made the basis of a charge of conspiracy between plaintiffs-in-error to enable them to have sexual intercourse with each other

XIV. Assuming but not conceding that the testimony offered in support of the third count of the indictment establishes anything, then it was that plaintiffs-in-error agreed to and did commit adultery, an offense which necessarily required their joint act, and therefore it could not and did not constitute conspiracy; an agreement between them having for its ultimate purpose that they commit adultery by sexual intercourse one with the other did not and could not constitute the offense of conspiracy against the United States; therefore the evidence at the trial did not establish the offense of conspiracy charged in the third count of the indictment and plaintiffs-in-error joint and several conviction under the third count of the indictment was against the evidence and the law.

XV. The conviction of plaintiffs-in-error jointly and severally of the offense attempted to be charged or charged in the third count of the indictment was against the weight of evidence and against the law.

(A) The Government failed to prove beyond a reasonable doubt the agreement to transport plaintiff-in-error Louise Rolfe as and for the purposes in the third count of the indictment set forth.

(B) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent
194 D'Oro, and Louise Rolfe boarded a car in the City of Chicago, State of Illinois, on a railroad bound for the State of Florida, as in the third count of the indictment set forth.

(C) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe traveled together through the Eastern Division of the Northern District of Illinois on a car bound from the City of Chicago to Jacksonville, in the State of Florida, or traveled together from Chicago to Jacksonville, as in the third count of the indictment set forth.

(D) The Government failed to prove beyond a reasonable doubt that any immoral purpose was formed or intended by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro and Louise Rolfe, or either of them, before said plaintiffs-in-error or either of them crossed the State of Illinois for and en route to a place in the State of Florida, as in the third count of the indictment set forth.

(E) The Government failed to prove beyond a reasonable doubt that plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe had sexual intercourse with each other outside the State of Illinois as a result of a preconceived plan or intention, or in furtherance of a preconceived plan or intention so to do formed prior to their leaving the State of Illinois or prior to their arrival at the destination, as and in the third count of the indictment charged.

(F) The Government failed to prove beyond a reasonable doubt the transportation in the third count of the indictment charged.

195 (G) The Government failed to prove beyond a reasonable doubt the sexual intercourse in the third count of the indictment charged.

(H) The Government failed to prove beyond a reasonable doubt that any immoral purpose was formed by plaintiffs-in-error Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe before the state line of Illinois was crossed at the times and in the manner in the third count of the indictment charged.

Generally

XVI. The learned District Court erred in receiving in evidence, over objection of plaintiffs-in-error, the testimony of one William Maass (S. M. pp. 363-365) as follows:

"Mr. Anderson: Q. How often did you have occasion to go there?

A. I am not sure; three or four times.

Q. You think that is all?

A. Yes, sir.

Q. Were you there on the 27th of February, 1929, the day they were arrested?

A. Yes, sir.

Mr. Hamlin: I object to that. There is no evidence in the record that they were arrested.

Mr. Anderson: Well, there will be.
Mr. Hamlin: But you have no right to anticipate it.
Mr. Anderson: Q. Isn't it a fact that you went in on that day?
A. Yes, sir.
Q. And the police came in behind you?
A. No, sir.
Mr. Hamlin: You cannot cross-examine your own witness, and I object to it.
Mr. Anderson: Q. On that day, didn't you see both the defendants?
Mr. Hamlin: I object to the form of the question.
The Court: He may answer.
The Witness: One day I served papers to the lady and I seen a gentleman sitting in the room.
Mr. Hamlin: Trying to impeach his own witness.
The Court: He may answer.
196 Mr. Hamlin: All right. I abide by your ruling.
The Witness: I served papers to the lady, and I seen a gentleman sitting in the room.
Mr. Anderson: Q. Which gentleman?
A. I don't know who he was. The room was dark.
Q. You don't see that man here now?
A. No, sir.
Q. On how many occasions did you see the gentleman in the room?
A. Just once.
Q. Do you know what date it was?
A. I don't know. I think it was the 27th, 1929.
Q. The day they were arrested?
A. I don't know when they were arrested.
Mr. Hamlin: I object to that.
The Court: He says he doesn't know.
Mr. Anderson: Cross-examine.
Mr. Hamlin: No cross-examination",
upon the ground that the alleged conspiracy charged in the first and/or second and/or third counts of the indictment and/or all of said counts had been consummated and completed before February 27, 1929, and that the testimony of what this witness saw plaintiffs-in-error or either of them do, or what he observed of or concerning either of them on or about February 27, 1929 was and is irrelevant, immaterial and grossly prejudicial to the rights of plaintiffs-in-error and each of them, plaintiffs-in-error jointly and severally re-

spectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to plaintiffs-in-error and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

XVII. The learned District Court erred in receiving in evidence, over objection of plaintiffs-in-error, the testimony of one Jay Abrams (S. M. pp. 366-368) as follows:

197 "*Redirect Examination by Mr. Anderson.*

Mr. Anderson: He was sworn yesterday.

Q. You are the same Mr. Abrams who was sworn in this case before?

A. Yes, sir.

Q. Calling your attention to February 27, 1929, did you have occasion to go to Room 1919 in the Stevens Hotel?

A. Yes, sir.

Q. Who did you accompany, if anybody?

A. Lieutenant Cusack and his men.

Q. Did you see anybody in that room that you see here today?

A. I saw Mr. McGurn and Mrs. McGurn.

Q. And by Mr. and Mrs. McGurn, you mean the defendant here, known as Vincent Gebardi and Louise Rolfe?

A. Yes.

Q. How was Mrs. McGurn dressed?

A. She had—I think she had a kimona on. I wouldn't be positive on that. She was dressed.

Mr. Hamlin: She was dressed, you say?

A. Yes, sir.

Mr. Anderson: Q. How was the defendant, Vincent Gebardi, dressed?

A. He had his trousers on, without a shirt on.

Q. Tell just what took place after you came in there.

A. The officers went in and I came in afterwards.

Q. Tell what you saw and what you heard said and who said it.

A. The officers went in there and I came in after that, and they talked then about a lot of things, but I didn't pay much attention to it.

Q. You don't recall what they said?
A. No, they were questioning them and I went out.
Mr. Anderson: Cross-examine.

Recross Examination by Mr. Hamlin.

Q. You remember testifying in the Municipal Court of the City of Chicago pertaining to a certain fornication case between the State of Illinois and Vincent Gebardi?
A. No, sir.
Q. Did you testify in that case?
A. I testified they were in the room.
Q. I say, did you testify in that case?
A. Yes.
Q. Didn't you testify the other day?
A. Yes, sir. That is as to the records, the register sheet.
Q. What time of the day or night was it when you made your call with these officers?
A. Around noon time sometime.
Q. What day of the year?
A. Well, that I don't remember.
Q. Had you had the room under observation that morning?
A. When the officers came, yes.
Q. I mean, did you personally have it under observation?
A. No, not until the officers came.
Mr. Hamlin: That is all.
(Witness excused)",

upon the ground that the alleged conspiracy charged in the first and/or second and/or third counts of the indictment and/or all of said counts had been consummated and completed before February 27, 1929, and that the testimony of what this witness saw plaintiffs-in-error or either of
198 them do, or what he observed of or concerning either of them on or about February 27, 1929 was and is irrelevant, immaterial and grossly prejudicial to the rights of plaintiffs-in-error and each of them, plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to plaintiffs-in-error and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34

Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

XVIII. The learned District Court erred in receiving in evidence, over objection of plaintiffs-in- error, the testimony of one James L. Woulfe (S. M. pp. 368-371) as follows:

"Q. State your name?

A. James L. Woulfe.

Q. What is your business?

A. Police officer, City of Chicago.

Q. Was it such in January, 1929?

A. Yes sir.

Q. Calling your attention to January 31—no, February 27, 1929, did you have occasion to go to the Stevens Hotel?

A. I did.

Q. Who were with you?

A. Lieutenant Cusack and Officer Pieske.

Q. The witness who just testified, was he with you,—Abrams?

A. Yes, sir.

Q. What room did you go to, if you know?

A. We went to the room, as I remember, 1920A.

Q. And what did you do there?

A. We were listening for conversation in 1919-A.

Q. How long did you listen for conversation in 1919-A?

A. Oh, maybe ten or fifteen minutes.

Q. Did you hear any voice that you recognized?

A. I didn't. Lieutenant Cusack recognized the—

Mr. Hamlin: I object to what Lieutenant Cusack did.

Mr. Anderson: Q. After Lieutenant Cusack recognized some voice, what happened?

A. He said they was in the other room.

Q. Well, what did you do?

A. Why, I opened the door of the room we were in, and there was a man, a buss-boy, bringing in some foods, so we followed the buss-buy right in the room.

Q. Was that the witness who testified, Mr. Maass?

A. I don't know if that is the buss-boy or not.

Mr. Hamlin: He said his business was the house-199 man.

Mr. Anderson: The bell-boy he called himself.

Q. Did you see him, who called himself the bell-boy or bellman?

A. I don't know if that is the fellow or not. I didn't pay much attention to him.

Q. All right. When you came into the room, what did you see?

A. I seen Jack McGurn and Louise Rolfe.

Q. The defendants in this case?

A. Yes, sir.

Q. These you see here now?

A. Yes, sir.

Q. This was at the Stevens Hotel in Chicago, Illinois?

A. Yes, sir.

Q. Tell us what took place in the room when you got in there?

A. Well, Jack was sitting down reading a newspaper and Louise Rolfe was sitting on the other side of the room, and we searched Jack and then Lieutenant Cusack ordered us to search the room, so we searched the room. I searched the dresser and he had two—

Mr. Hamlin: You honor, I object to this; this search was evidently illegal.

The Court: Was it a Federal officer?

Mr. Hamlin: A City officer.

The Court: Go ahead.

The Witness: We searched the rooms and I was looking for fire-arms and I found two revolvers in the dresser. Officer Pieske searched the trunks and other parts.

Mr. Hamlin: I object to what the other officer did.

The Court: Tell only what you saw.

The Witness: Well, I took two revolvers out of the dresser drawer.

Mr. Anderson: Q. What kind of baggage did you see there?

A. Well, there was a couple of trunks.

Q. Do you know what kind of trunks they were?

A. Wardrobe trunks, a couple of handbags, a ladies' hat-box'';

upon the ground that the alleged conspiracy charged in the first and/or second and/or third counts of the indictment and/or all of said counts had been consummated and completed before February 27, 1929, and that the testimony of what this witness saw plaintiffs-in-error or either of them do, or what he observed of or concerning either of them on or about February 27, 1929 was and is irrelevant, immaterial and grossly prejudicial to the rights of plaintiffs-in-error and each of them, plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the

record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then
200 plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to plaintiffs-in-error and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

XIX. The learned District Court erred in receiving in evidence Government's Exhibit 80 (S. M. p. 336), it being urged that error was so committed upon the ground that it was and is irrelevant, immaterial and incompetent under the issue raised by plaintiffs'-in-error joint and several plea of not guilty to the indictment and to each and every count thereof, said exhibit having come into the possession of the Government in violation of the constitutional rights of plaintiffs-in-error, being a seizure without search warrant or other warrant in law; and furthermore upon the ground that said exhibit was not proven to be in any way connected with the conspiracy charged in the first and/or second and/or third counts of the indictment, nor was there any evidence to show where said exhibit was written or by whom written or by whom mailed, plaintiffs-in-error respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then plaintiffs-in-error urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

XX. The learned District Court erred in receiving in evidence Government's Exhibits 84, 85 and 86 (S. M. p. 372), it being urged that error was so committed upon the ground
201 that they were and are irrelevant, immaterial and incompetent under the issue raised by plaintiffs'-in-error joint and several plea of not guilty to the indictment and to each and every count thereof, said exhibits having come into the possession of the Government in violation of the constitutional rights of plaintiffs-in-error, being a seizure without search warrant or other warrant in law; and furthermore upon the ground that said exhibits were not proven to be in any way connected with the conspiracy charged in the first and/or second and/or third counts of the indictment, nor was

there any evidence to show when or where said exhibits were taken or made, plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then they urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit), 34 Fed. (2d) 86, 92 and cases cited in the opinion of Wilbur, Circuit Judge).

XXI. The learned District Court erred in receiving in evidence Government's Exhibit 53 (erroneously reported S. M. p. 198 as Exhibit 52) and Exhibits 87 and 88 (S. M. pp. 376-377), it being urged that error was so committed upon the ground that they are and each of them is and was irrelevant, immaterial and incompetent under the issue raised by plaintiffs'-in-error joint and several plea of not guilty to the indictment and to each and every count thereof, said exhibits having come into the possession of the Government in violation of the constitutional rights of plaintiffs-in-error, being a seizure without search warrant or other warrant in law; and furthermore upon the ground that said exhibits were not
202 proven to be in any way connected with the conspiracy charged in the first and/or second and/or third counts of the indictment, nor was there any evidence to show when or where said exhibits were taken or made; plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by the assignment of error, then they urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit), 34 Fed. (2d) 86, 92, and cases cited in opinion of Wilbur, Circuit Judge.

XXII. The learned District Court erred in receiving in evidence, over plaintiffs'-in-error objection, testimony of Ernest A. Pieske (S. M. pp. 378-382) as follows:

"*Direct Examination by Mr. Anderson.*

Q. State your name?
A. Ernest A. Pieske.
Q. What is your business, Officer?

A. Police Officer, City of Chicago.
Q. Was it such in January, 1929?
A. Yes.
Q. Calling your atention to January 31, 1929, did you have occasion to go to the Hotel Stevens, Chicago, Illinois?
A. No.
Q. February 27th, I mean to say?
A. Yes, sir.
Q. Tell the Court who accompanied you, and what you did there, and what you saw, and what was said there, and who said it.
A. Lieutenant Cusack, Mr. Woulfe, Mr. Abrams and myself went to the hotel and went to the room adjoining 1919-A about 10:30 A. M. and we listened for a while, and finally left that room and followed a bell-boy with a tray of food into Room 1919-A. We got in there and I saw Jack McGurn and Louise Rolfe in the room.
Q. The defendants in this case?
A. Yes, sir.
Q. That you see here now?
A. Yes, sir.
Q. Yes.
A. (continuing) And after we got in there Lieutenant Cusack ordered us to search the room. I searched the room and went into a dresser and picked up several notes and read them.
Q. I am going to ask you to read what is on this card and tell the Court whether that is the card that you picked up at that time?
A. You want me to read it out loud?
Q. No, Read it to yourself?
A. Yes.
203 Q. You saw that card?
A. Yes, sir. I picked it up and read it.
Q. Referring to Government's Exhibit 80. I will ask you to look at Government's Exhibit 84 and read that to yourself and then tell the Court whether or not you saw that before—or, read a part of it.
A. Yes, I picked this up and read it.
Q. I shall ask you to read a part of Government's Exhibit 85 and then determine whether or not you picked that up in that room?
A. Yes, I read this one too.
Q. I shall ask you to read Government's Exhibit 86 to

yourself, or part of it, and determine whether or not you picked that up in the room?

A. Yes, I read this one too.

Q. Where did you pick up these papers, referring to Government's Exhibits 80, 84, 85 and 86?

A. I got them out of a dresser drawer in Room 1919-A in the Stevens Hotel.

Q. I show you Government's Exhibits 53, 87 and 88, and ask you if you saw them there at that time?

A. Yes, I saw these pictures there.

Q. Where did you see them?

A. In Room 1919-A, Stevens Hotel.

Q. How did you happen to see them?

A. They were found.

Q. By whom?

By Officer Sullivan.

Q. Do you know where?

A. Picked up in the room there. That was Officer Sullivan; Joseph Sullivan.

Q. You saw them there in the room?

A. Yes, sir.

Q. And you saw quite a few other pictures?

A. Yes, sir; snap shots.

Q. Pictures like these in this book (indicating)?

A. Yes, sir.

Q. What conversation, if any—or, did you see the defendants there?

A. Yes, I did.

Q. How was the defendant, Louise Rolfe, dressed when you came in there?

A. She had on a dressing gown and a pair of slippers, fancy slippers.

Q. How was the defendant Jack McGurn or Vincent Gebardi dressed?

A. He had on a pair of house slippers, his trousers and a black dressing robe over that.

Q. Did he have a shirt on?

A. No shirt on.

Q. Tell the Court what conversation was had there.

A. I had no conversation, Lieutenant Cusack talked to them.

Q. Did you hear any of that?

A. I didn't pay any attention to it."

upon the ground that the alleged conspiracy charged in the

first and/or second and/or third counts of the indictment and/or all of said counts had been consummated and completed before February 27, 1929, and that the testimony of what this witness saw plaintiffs-in-error or either of them do, or what he observed or or concerning either of them on
204 or about February 27, 1929 was and is irrelevant, immaterial and grossly prejudicial to the rights of plaintiffs-in-error and each of them, they jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then they urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of them upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit), 34 Fed. (2d) 86, 92, and the cases cited in the opinion of Wilbur, Circuit Judge.

XXIII. The learned District Court erred in receiving, over objection and exception of plaintiffs-in-error Exhibits 89 and 90, purporting to be two consecutive statements of Louise Rolfe claimed by the Government to have been made, Exhibit 89 February 27, 1929 and Exhibit 90 February 28, 1929; as each of them was and both were and are irrelevant, immaterial and incompetent and grossly prejudicial to both plaintiffs-in-error inasmuch as (A) the testimony adduced and embodied in said Exhibit 89 and/or Exhibit 90, was not given in the presence of plaintiff-in-error McGurn nor in his hearing nor with his knowledge or at his request, related in part to alleged acts of and conversations by plaintiff-in-error after the completion of the alleged conspiracy charged in the first count of the indictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the first count of the indictment charged; (B) the testimony adduced and embodied in said Exhibit 89 and/or Exhibit 90, not given in the presence of plaintiff-in-error McGurn nor in his hearing nor with his knowledge or at his request, related in part to alleged acts of and conversations by the two plaintiffs-in-error after the completion of the alleged conspiracy charged in the second count of the in-
205 dictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the second count of the indictment charged; and (C) the testimony adduced and embodied in said Exhibit 89 and/or Exhibit 90, not given in the presence of plaintiff-in-

error McGurn nor in his hearing nor with his knowledge or at his request, related in part to alleged acts of and conversations between the two plaintiffs-in-error after the completion of the alleged conspiracy charged in the third count of the indictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the third count of the indictment charged; the witness' testimony or statement was furthermore immaterial, irrelevant and incompetent and grossly prejudicial to the plaintiff-in-error McGurn and not in any way binding upon him upon the ground that it was testimony as to alleged acts done and statements made by plaintiff-in-error Rolfe after the completion of the alleged conspiracy in the first and/or second and/or third counts of the indictment charged, and binding, if on anybody, only on plaintiff-in-error Rolfe and in no way in furtherance of any one or all of the alleged conspiracies in the indictment charged; and insofar as Exhibit 89 and/or Exhibit 90 related to acts and statements by and conversations with plaintiff-in-error McGurn the same were and are incompetent as hearsay evidence, and generally irrelevant, immaterial and incompetent as the acts and conversations occurred after the completion of any one or all of the alleged conspiracies in the indictment charged and not in furtherance of any one of them and are in no way binding upon plaintiff-in-error McGurn (S. M. pp. 384, 385, 395, 396, 397, 398, 399, 400); plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then they urge the

206 proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of it upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit), 34 Fed. (2d) 86, 92, and cases cited in the opinion of Wilbur, Circuit Judge.

XXIV. The learned District Court erred in receiving, over objection and exception of plaintiffs-in-error, Government's Exhibit 91, purporting to be a statement of plaintiff-in-error Jack McGurn, claimed by the Government to have been made February 27, 1929, as the same was and is irrelevant, immaterial and incompetent and grossly prejudicial to both plaintiffs-in-error inasmuch as (A) the testimony adduced and embodied in said exhibit, not given in the presence of plaintiff-in-error Louise Rolfe nor in her hearing nor with her knowledge or at her request, related in part to alleged

acts of and conversations by the two plaintiffs-in-error after the completion of the alleged conspiracy charged in the first count of the indictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the first count of the indictment charged; (B) the testimony adduced and embodied in said exhibit, not given in the presence of plaintiff-in-error Louise Rolfe nor in her hearing nor with her knowledge or at her request, related in part to alleged acts of and conversations by the plaintiffs-in-error after the completion of the alleged conspiracy charged in the second count of the indictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the second count of the indictment charged; and (C) the testimony adduced and embodied in said exhibit, not given in the presence of plaintiff-in-error Louise Rolfe nor in her hearing nor with her knowledge or at her request, related in part to al-
207 leged acts of and conversations between the plaintiffs-in-error after the completion of the alleged conspiracy charged in the third count of the indictment, and was testimony given by the witness after the completion and consummation of the alleged conspiracy in the third count of the indictment charged; the witness' testimony or statement was furthermore immaterial, irrelevant and incompetent and grossly prejudicial to plaintiff-in-error Louise Rolfe and did not in any way binding upon her upon the ground that it was testimony as to alleged acts done and statements made by plaintiff-in-error McGurn after the completion of the alleged conspiracy in the first and/or second and/or third counts of the indictment charged, and binding, if on anybody, only on plaintiff-in-error McGurn and in no way in furtherance of any one or all of the alleged conspiracies in the indictment charged; and insofar as Exhibit 91 related to acts and statements by and conversations with plaintiff-in-error Louise Rolfe, the same were and are incompetent as hearsay evidence, and generally irrelevant, immaterial and incompetent as the acts and conversations occurred after the completion of any one or all of the alleged conspiracies in the indictment charged and not in furtherance of any one of them and are in no way binding upon plaintiff-in-error Rolfe (S. M. pp. 384, 385, 395, 396, 397, 398, 399, 400); plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this

assignment of error, then they urge the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of it upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in opinion of Wilbur, Circuit Judge.

208 XXV. The learned District Court erred in receiving testimony of witness M. J. Cusack (S. M. pp. 403-404), as follows:

"Direct Examination by Mr. Anderson.

The Court: Is this for the purpose of showing what was in this room?

Mr. Anderson: Merely to corroborate the testimony about the exhibits.

The Court: Is there going to be any controversy that these came from the room?

Mr. Hamlin: To be perfectly frank, neither of our witnesses can go on the stand to deny a thing, and it is impossible to deny they were not in that room.

The Court: Don't take the time—I don't think further identification then is necessary.

Mr. Anderson: I want the record particularly to show—

The Court: Well, go ahead. Go ahead. You had police officers over there to testify to the same facts, that these people were arrested, that they were in the room; they can't deny it and they can't deny that these came from the room.

Mr. Hamlin: They can't even go on the witness stand.

Mr. Anderson: Q. What is your name?

A. M. J. Cusack.

Q. What is your business?

A. Lieutenant of police.

Mr. Hamlin: I am willing to stipulate that his testimony would be substantially the same as the other officers.

Mr. Anderson: With reference to Exhibits 80, 84, 85 and 86, and Government's Exhibits 53, 87 and 88.

The Court: You have seen those exhibits?

The Witness: Yes, sir.

The Court: They were in that room?

The Witness: Yes, sir.

The Court: You took them away with you?

The Witness: Yes, sir."

inasmuch as same related to matters and things in being and occurring after the completion and consummation of the con-

spiracy in each of the counts of the indictment alleged and clearly not in furtherance of the conspiracy, and the receipt of said evidence and the exhibits to which it related were highly prejudicial to each and both plaintiffs-in-error, they jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this assignment of error, then they urge
209 the proof is so manifestly incompetent, irrelevant, insufficient and prejudicial to them and each of them that the learned Court may take cognizance of it upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and the cases cited in the opinion of Wilbur, Circuit Judge.

XXVI. The learned District Court erred in denying the motion made on behalf of plaintiffs-in-error that the testimony given by the Government's witnesses as to the stay at the McCormick Hotel, in Chicago, Illinois, of the plaintiff-in-error McGurn and his alleged former wife, be stricken out. (S. M. p. 432).

XXVII. The learned District Court erred in receiving, over plaintiffs'-in-error objection and exception, testimony of the witness G. T. Miller as to the acts of plaintiff-in-error Louise Rolfe at the Lexington Hotel, Chicago, Illinois, in May 1929 (S. M. pp. 5-7) as follows:

"Q. After December of 1928 do you know whether or not Louise Rolfe came back there?

A. Yes, sir.

Q. Do you recall about when it was, and how long she stayed?

A. May, 1929, for several weeks.

Q. When was this?

A. May, 1929. I don't recall the exact date. In May some time.

The Court: May, 1929?

A. 1929, May.

Mr. Hamlin: If your Honor please that is after the date set forth in the indictment.

Mr. Anderson: This evidence is being offered for another purpose.

Mr. Hamlin: Then we ought to have the purpose.

Mr. McCormick: This was after the time of the indictment.

The Court: This indictment was filed on November 21, 1929.

Mr. McCormick: Yes, the first count, and the third count of the indictment charges the offense beginning December, 1928, and January 25, 1929.

The Court: The indictment came to a conclusion before this date and charges certain overt acts about that time.

Mr. McCormick: This is 20592 that I have. It charges December 18, 1928, in the first count as the beginning of the conspiracy.

The Court: I am reading the second count.

Mr. McCormick: And in the second count, if the court 210 please, they charge unlawful conspiracy on January 25, 1929.

The Court: They are not limited to that date.

Mr. McCormick: No, but in the third count they also charge January 25, 1929, and they do not go into any act beyond January of 1929. Now they are seeking to introduce some evidence in May of—

The Court: I don't think they are limited to any time prior to the time of the return of the indictment.

Mr. McCormick: Exception.

The Court: He may answer.

Mr. Anderson: Q. When Louise Rolfe, the defendant, was back in May, 1929, state whether or not you saw the defendant Jack McGurn there?

A. I don't recall.

Mr. Anderson: That is all. Cross examine.

Mr. Hamlin: No cross-examination."

This assignment of error is made for the reasons following:

The indictment sub judice does not charge a continuing conspiracy enduring down to the date of the finding or filing of the indictment, but in each count charges a separate and distinct complete conspiracy made and entered into on a specified date, entirely independent of and completed prior to any other conspiracy in the indictment attempted to be charged. The learned District Court therefore erred in ruling that the Government in offering evidence in support of the indictment was "not limited" to the dates in the indictment mentioned but could offer proof as to "any time prior to the time of the return of the indictment" (S. M. pp. 6-7), and therefore admission of the testimony in this assignment of error quoted and mentioned was error as irrelevant, imma-

terial and incompetent to the issue raised by the plea of not guilty entered by plaintiffs-in-error jointly and severally to the indictment and to each and every count thereof, and the testimony referred to was highly prejudicial to plaintiffs-in-error and each of them; plaintiffs-in-error jointly and severally respectfully suggesting to the Court that if there be doubt that the record discloses objection or exception taken sufficient to raise the questions presented by this as-
211 signment of error, then they urge the proof is so manifestly incompetent, immaterial and prejudicial to them and each of them that the learned Court may take cognizance of it upon the authority of *Lau Fook Kau* v. *U. S.* (C. C. A. 9th Circuit) 34 Fed. (2d) 86, 92, and cases cited in opinion of Wilbur, Circuit Judge.

XXVIII. The learned District Court erred in denying motion made on behalf of plaintiffs-in-error to strike from the record "alleged letters or documents or papers, whatever they might be, and those photographs that were in this trunk," being exhibits numbered 53, 87 and 88 (S. M. p. 433).

XXIX. The judgment of the learned District Court of the United States of America for the Northern District of Illinois, Eastern Division, pronounced in this action adjudging plaintiffs-in-error and each of them guilty of the crime charged in the first and/or second and/or third counts of the indictment or in all of the counts thereof is a nullity, void and of no effect, being a judgment rendered without power or jurisdiction of the Court so to do, in that at the trial of the issue raised by plaintiffs'-in-error joint and several plea of not guilty to the indictment and each count thereof the learned Court, contrary to public policy and without power or jurisdiction so to do, accepted a waiver tendered by the respective plaintiffs-in-error and their representatives of a jury trial of that issue, it being beyond the right, power or privilege of plaintiffs-in-error, or either of them, or their representatives, to waive a jury trial of said issue, and thereupon the District Court, consisting of the learned District Judge presiding and without a jury, proceeded to try the plaintiffs-in-error upon said issue, and the acceptance of said waiver by the learned District Court and said trial were in contra-
vention of the rights of plaintiffs-in-error and each
212 of them secured to them by the Constitution of the United States and the law in such case made and provided, and therefore the learned District Court was powerless and with-

out jurisdiction to act upon said waiver and powerless and without jurisdiction to make a finding of guilty and enter the judgment of conviction of plaintiffs-in-error and each of them on any and all of the counts of the indictment.

XXX. Plaintiffs-in-error reserve and each of them reserves the right within the time prescribed by the rules of this Court and the Circuit Court of Appeals to which this appeal is taken and the law in such case made and provided or upon proper application to the Court to supplement or otherwise amend these Assignments of Errors or any of them, as the record may disclose, and in such manner as they or each of them may be advised and to urge additional and other reasons than those herein advanced in support of the assignments of errors or any of them.

Wherefore plaintiffs-in-error jointly and severally pray that the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, against them and each of them be reversed and held for naught.

Dated Chicago, Illinois, August 1931.

JACK GEBARDI
Plaintiff-in-Error.

LOUISE ROLFE
Plaintiff-in-Error.

HAMLIN & CLEARY
Hamlin & Cleary
Attorneys and solicitors for plaintiffs-in-error.

HARRY F. HAMLIN
Harry F. Hamlin
CHAS. G. F. WAHLE
Charles G. F. Wahle
Of Counsel.

Approved:

U. S. D. J.

213 (Endorsed) No. 20592 In the District Court of the United States for the Northern Division of Illinois Eastern Division of Chicago United States of America vs. Jack Gebardi, otherwise known as Jack McGurn, otherwise known as Jim Vincent D'Oro, and Louise Rolfe. Amended Assignment of Errors. Filed Aug 25 1931 Charles M. Bates, Clerk. Law Offices Hamlin & Cleary, 123 West Madison Street, Chicago.

215 And afterwards, to wit, on the 21st day of July A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to wit: Enter 193

215 * * (Caption) * *

Tuesday, July 21st, A. D. 1931.

Present: Honorable Walter C. Lindley, Judge.

This day come the defendants Jack Gebardi, alias and Louise Rolfe and pray an appeal from the judgment heretofore entered herein to the United States Circuit Court of Appeals for the Seventh Circuit which appeal is allowed and the bond of the defendant Jack Gebardi alias fixed at the sum of fifteen thousand ($15,000.00) dollars and the amount of the bond for the defendant Louise Rolfe is fixed at the sum of five Thousand ($5,000.00) dollars, and thirty days time from this date is allowed the defendants to file their bill of exceptions herein, and

It Is Ordered, that leave be and the same is hereby given to use photostatic copies of exhibits and

It Is Ordered, that the bonds when filed are to act as supersedeas bonds.

Whereupon the defendants present herein their bonds which bonds are approved and signed by the Court and

Ordered by the Court to be filed by the Clerk of this Court.

215a And afterwards, to wit, on the 5th day of August A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Stipulation", same being in the words and figures following, to wit: Filed 193

216 * * (Caption) * *

STIPULATION.

It Is Hereby stipulated and agreed by and between the attorneys for the government and attorneys for the defendants, that the time for the filing of the bill of exceptions and tran-

script of record in C. C. A. Seventh Circuit in behalf of both of said defendants, to wit Jack Gebardi and Louise Rolfe, is to be extended for a period of thirty days, giving said defendants a total of sixty days from the time of entering the original order to wit: July 21, 1931.

HARRY F. HAMLIN
HOWARD MCCORMICK
Attys. for defendants
&
GEORGE E. Q. JOHNSON
U. S. Attorney
Per D. A.

Aug. 5. 217 And afterwards, to wit, on the 5th day of August A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to-wit:

218 ORDER.

On motion of Harry F. Hamlin and Howard H. McCormick, attorneys for the defendants, Jack Gebardi and Louise Rolfe, for good cause shown, it is hereby

Ordered that the Bill of Exceptions and transcript of record in Circuit Court of Appeals, Seventh Circuit and the Stay of Sentence be extended thirty days from August 21, 1931, as to all defendants.

Aug. 5, 1931.

Enter:
WALTER C. LINDLEY
Judge.

219 And afterwards, to wit, on the 25th day of August A. D. 1931 the following order was had and entered of record in said cause before the Honorable Walter C. Lindley, Judge, to wit:

220 • • (Caption) • • Enter 193

ORDER.

On motion of Harry F. Hamlin and Howard H. McCormick, attorneys for the defendants Jack Gebardi and Louise Rolfe, said defendants having filed their verified petitions for an order allowing said defendants to prosecute an appeal from the United States District Court, Northern District of Illinois, Eastern Division, to the United States Circuit Court of Appeals for the Seventh Circuit, for correcting errors and praying that said appeal may be a supersedeas in accordance with the laws of the United States made and provided, and this court, having duly on the 21st day of July A. D. 1931, allowed said appeal and for good cause shown, it is hereby ordered that said defendants may file within thirty (30) days from August 20th, A. D. 1931 as amended assignment of errors; and it is further ordered that the citation shall be entered and filed nunc pro tunc as of July
221 21st, A. D. 1931. It is further ordered that the photostatic copies of the exhibits are to be made a part of the Transcript and duly transmitted by the Clerk of the District Court to the Circuit Court of Appeals of the United States for this District.

Enter:

WALTER C. LINDLEY
Judge.

O. K.
DANIEL ANDERSON
Asst. U. S. Atty.

222 And afterwards, to wit, on the 31st day of July A. D. 1931 there was filed in the Clerk's Office of said Court in the above entitled cause a "Praecipe for Transcript of Record," same being in the words and figures following, to wit:—

31, 223 * * (Caption.) * *

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Charles M. Bates of the District Court of the United States. Chicago, Illinois.

You Will Please Prepare a true and complete transcript of the record in the above entitled case to be filed with the Clerk of the United States Circuit Court of Appeals for the 7th Judicial Circuit on behalf of Defendants Jack Gebardi, otherwise called Jack McGurn, and Louise Rolfe.

1. Placita.
2. Return of indictment order to file same.
3. Pleas of Not Guilty.
4. June 9, 1931, motion to reopen the case by the Government and exception thereto. and notice by U. S. Atty.
5. July 21, 1931, motion of Defendant's attorneys Harry F. Hamlin and Howard H. McCormick to direct a verdict of Not Guilty at the close of the Government's case, order overruling same and exception thereto.
6. Verdict of the Court.
7. Motion to arrest Judgment, denial of same and exceptions thereto.
8. Judgment and sentence.
9. Filing of Appeal Bond for Defendants.
10. July 21, 1931 Motion for new trial.
11. July 21, 1931, denial of motion for new trial, exception thereto.

224 12. July 8, motion by government to reopen its case and exception thereto. and notice by U. S. Atty.

13. Petition for Appeal and Supersedeas.
14. Order allowing appeal and Supersedeas.
15. Order allowing amended petition for appeal and assignment of error. Aug. 25, 1931.
16. Ammended petition for appeal and ammended petition for assignment of error. Aug. 25, 1931.
17. Order allowing photostatic copies in lieu of original exhibits.
18. Filing of Appeal bond for defendants.
19. Bill of exceptions.
20. Certificate of clerk authenticating transcript of record.

21. May 28, 1931. Stipulation of Agreed Facts.
22. May 26, 1931. Jury Waiver of Vincent Gebardi.
23. May 26, 1931. Jury Waiver of Mrs. Vincent Gebardi.
24. July 21, 1931. Nunc Pro Tunc Citation.

HARRY F. HAMLIN,
HOWARD H. MCCORMICK.

Received a copy of the foregoing July 31st, 1931.

GEORGE E. Q. JOHNSON,
U. S. Attorney.
Per DANIEL ANDERSON.

225 (Endorsed) * * (Caption) * * Praecipe for Transcript of Record. Filed July 31-1931 Law Offices Hamlin & Cleary 123 West Madison Street Chicago Phone Randolph 2734

226 Northern District of Illinois } ss.
Eastern Division }

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled United States of America vs. Jack Gebardi otherwise called Jack McGurn otherwise called Jim Vincent D'Oro and Louise Rolfe Case No. 20592 as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of September, A. D. 1931.

CHARLES M. BATES
Clerk.

(Seal)

227 And afterwards, to wit, on the 25th day of August A. D. 1931 there was filed in the Clerk's office (Nunc pro Tunc as of July 21st, A. D. 1931) of said Court a "Citation," same being in the words and figures following, to wit:

228 United States of America, } ss.

The President of the United States, To Honorable George Q. Johnson, United States Attorney and the Honorable Daniel Anderson, Assistant United States District Attorney, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe are plaintiffs in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the said Jack Gebardi and Louise Rolfe as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter C. Lindley Judge of the District Court of the United States, nunc pro tunc this 21st day of July, in the year of our Lord one thousand nine hundred and thirty-one.

WALTER C. LINDLEY,
Judge.

Service of the within citation acknowledged this 21st day of July, A. D. 1931.

GEORGE E. Q. JOHNSON,
United States Attorney for defendant in error.

Per D. A.

(Endorsed) * * (Caption) * * Citation Filed Aug 25 1931 Charles M. Bates, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS Filed 1931

For the Seventh Circuit.

October Term, A. D. 1931.

Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
The United States of America,
Appellee.
No. 4649.

STIPULATIONS AS TO REVISIONS AND CORRECTIONS OF THE TRANSCRIPT OF RECORD.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following revisions and corrections should be made in the typewritten transcript of record heretofore filed in the above cause on September 11, 1931, and in the printed transcript of record heretofore filed in the above cause on October 22, 1931; that,

1. On page 55 of the typewritten copy, (line not specified) and on page 25 of the printed copies, on the bottom line, the date "January 25, 1929" should read "January 5, 1929".

2. On page 56 of the typewritten copy, (line not specified) and on page 27 of the printed copies, in the fifth line, the date "January 5, 1929" should read "January 24, 1929".

3. On page 100 of the typewritten copy, (lines not specified) and on page 58 of the printed copies, lines twenty-three, twenty-four and twenty-five, which now read, "I received it because I delivered the baggage from the Edgewater Gulf Hotel to the L & N Depot at Biloxi, Mississippi", should read, "I received it because I delivered the baggage to the Edgewater Gulf Hotel from the L & N Depot at Biloxi, Mississippi", that is to say, the word "from" in line twenty-three should read "to", and the word "to" in line twenty-four should read "from", and it is Hereby Stipulated and Agreed that said revisions and corrections may be made by the Clerk of this Court on the face of the records filed in the above cause.

It is further stipulated and agreed that on June 9, 1931, after the order had been entered which is set forth in the type-

written copy of the transcript of record, on page 29, (line not specified) and at the bottom of page eleven and top of page twelve of the printed copies of the transcript of record, the government recalled Henrietta Webb as a witness for the government, to testify that the Hotel LaSalle was located at Chicago, Illinois, in the Eastern Division of the Northern District of Illinois, and was prepared to recall as witnesses for the government Walter Hausen and G. T. Miller, to testify that the Hotel Lexington was located at Chicago, Illinois, in the Eastern Division of the Northern District of Illinois, when counsel for the defendants (herein called appellants) stated to the court that the said defendants (herein called appellants) by their counsel would admit that these hotels were so located, but that they wanted the record to show that evidence thereof was being received over their objection, that is to say, over the objection of counsel for said defendants (herein called appellants), and that the said counsel for said defendants (herein called appellants) objected to the introduction of said evidence on the grounds that said evidence was immaterial and on further grounds that both the government and the defense had theretofore rested its case, and that counsel for the said defendants (herein called appellants) excepted to the ruling of the court in its granting the government permission to introduce in evidence the location of said hotels in the Division and District aforesaid, over the objection of counsel for the said defendants (herein called appellants).

It is further stipulated and agreed that the court thereupon let the record show that said hotels were so located in the Division and District aforesaid, and thereafter gave the defense an opportunity to introduce further testimony in behalf of the defense.

GEORGE E. Q. JOHNSON
United States Attorney,
Counsel for Appellee.

HENRY F. HAMLIN
CHAS. G. F. WAHLE
Counsel for Appellants.

As the judge who tried the above cause in the United States District Court, and heard the evidence, I hereby acquiesce in the above-mentioned revisions and corrections of that part of the transcript of record known as the Bill of Exceptions.

WALTER C. LINDLEY
United States District Judge.

(Endorsed) No. 4649 In the Circuit Court of Appeals of the United States for the Seventh Circuit. Jack Gebardi alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe, Appellants, vs. The United States of America, Appellee. Stipulations as to Revisions and Corrections of the Transcript of Record. George E. Q. Johnson, U. S. Attorney. Filed Nov 5-1931 Frederick G. Campbell, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Entered 5, 1

For the Seventh Circuit.

Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
} No. 4649.

ORDER.

Upon motion of George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Eastern Division,

It Is Hereby Ordered that the stipulations entered into between the United States of America, appellee, and Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, appellants, by their respective attorneys, revising and correcting certain errors and omissions in the transcript of record, heretofore filed in the above cause, be made a part of the said transcript of record.

Enter:

SAMUEL ALSCHULER
Judge.

Dated: Chicago, Illinois, November 5, A. D. 1931.

(Endorsed) No. 4649 In the Circuit Court of Appeals of the United States for the Seventh Circuit. Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro & Louise Rolfe, Appellants, vs. United States of America, Appellee. Order. George E. Q. Johnson, U. S. Attorney. Filed Nov. 5-1931 Frederick G. Campbell, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed 1931

For the Seventh Circuit.

Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
No. 4649.

STIPULATIONS AS TO REVISIONS AND CORRECTIONS OF THE TRANSCRIPT OF RECORD.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following revisions and corrections should be made in the typewritten transcript of record heretofore filed in the above cause on September 11, 1931, and in the printed transcript of record heretofore filed in the above cause on October 22, 1931; that,

1. On page 118 of the typewritten copy (line not specified), and on page 71 of the printed copies, in the line next to the bottom line following the words "he liked it", insert the words "possibly two or three weeks".

2. On page 146 of the typewritten copy (line not specified), and on page 100 of the printed copies, at the bottom of the page, insert words "stamped on back: Central tube station 1929 Jan 31 AM 10 44, The Stevens Chicago".

3. On page 133 of the typewritten copy (line not specified) and on page 87 of the printed copies, in the fourth line of Government's Exhibit 7, change the words "date of departure 12/18/28" to read "date of departure 12/22/28".

HARRY F. HAMLIN
CHARLES G. F. WAHLE
Counsel for Appellants.

By HARRY F. HAMILTON
GEORGE E. Q. JOHNSON
George E. Q. Johnson
Counsel for Appellee.

(Endorsed) C. C. A. No. 4649 In the Circuit Court of Appeals of the United States for the Seventh Circuit. Jack Gebardi alias Jack McGurn, alias Jim Vincent D'Oro and

Louise Rolfe, Appellants, vs. United States of America, Appellee. Stipulations as to Revisions and Corrections of the Transcript of Record. George E. Q. Johnson, U. S. Attorney. Filed Dec 29 1931 Frederick G. Campbell, Clerk.

ec. 29. IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
} No. 4649.

ORDER.

Upon motion of George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Eastern Division,

It Is Hereby Ordered that the stipulations entered into between the United States of America, appellee, and Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, appellants, by their respective attorneys, revising and correcting certain errors and omissions in the transcript of record, heretofore filed in the above cause, be made a part of the said transcript of record.

It Is Further Ordered that the Clerk of this Court make corrections and revisions in the original and printed transcripts as per stipulations.

Enter:
SAMUEL ALSCHULER
Judge.

Dated: Chicago, Illinois, Dec. 29, A. D. 1931.

(Endorsed) No. 4649 In the Circuit Court of Appeals of the United States for the Seventh Circuit. Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, Appellants, vs. United States of America, Appellee. Order George E. Q. Johnson, U. S. Attorney. Filed Dec 29 1931 Frederick G. Campbell, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Filed 193

For the Seventh Circuit.

Jack Gerabri, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
No. 4649.

STIPULATIONS AS TO REVISIONS AND CORRECTIONS OF THE TRANSCRIPT OF RECORD.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following revisions and corrections should be made in the typewritten transcript of record heretofore filed in the above entitled cause on September 11, 1931, and in the printed transcript of record heretofore filed in the above cause on October 22, 1931; that

1. On page of the typewritten copy (line not specified), and on page 76 of the transcript of the printed copies, immediately following the last line on page 76, insert the following:

"Government's Exhibits 84, 85 and 86 were marked for identification.

"Mr. Anderson: Q. I hand you Government's Exhibit 80 and ask you if you have seen that before? Take a look at it.

"A. Yes, I have seen this before.

"Q. Where did you first see it?

"A. The first I seen it was in Mr. Stege's office.

* * * * * *

"Q. I hand you Government's Exhibits 84, 85 and 86, and ask you if you have seen them before? Take a look at them.

"A. I have seen them with a lot of papers. I did not read them. * * * Officer Pieske picked them up in the room.

"Q. Did you see him pick them up?

"A. Yes, sir; and a lot of papers.

"Q. Did you see him pick up Government's Exhibit 80?

"A. Yes, sir.

"Q. Where did he pick up Government's Exhibits 80, 84, 85 and 86?

"A. He took the papers out of the dresser drawers after I searched them for the pistols.
"Q. Where?
"A. Room 1919 Stevens Hotel.
"Q. Chicago, Illinois. And you saw that?
"A. Yes, sir.

Cross-Examination by Mr. Hamlin.

* * * * * *

"Q. You remember signing a complaint over in the Municipal Court with a charge of adultery against this defendant?
"A. Yes, sir.
"Q. Do you remember testifying over there?
"A. Yes, sir.
"Q. All right. That is all. Just a moment. Do you remember after that case was discharged over in the Municipal Court that you came over here to the Government and made a complaint? Did you do that?

* * * * * *

"A. No, I came over here to the Grand Jury.

* * * * * *

"Q. Do you know who asked the Government to prosecute the case?
"Mr. Anderson: I will say that the State's Attorney asked me to sign the complaint and I signed the complaint.

Redirect Examination by Mr. Anderson.

"Mr. Anderson: Q. I hand you Government's Exhibits 87 and 88 and 53, and state if you saw those exhibits which purport to be pictures, when you were in the hotel?
"A. Yes, sir.
"Q. And in with these pictures you also saw a great number of other pictures, is that right?
"A. Yes, sir.

Recross Examination by Mr. Hamlin.

"Q. Did you break into a trunk to get the pictures?
"A. I didn't get them.
"Q. Where did they come from?
"A. One of the other officers found them.
"Q. Where?

"A. Room 1919-A.

* * * * * *

"Mr. Hamlin: I move that all the testimony with reference to the pictures be stricken.

"The Court: Motion denied.

* * * * * *

"The Court: He said he was there when they were taken.

"Mr. Anderson: Q. Were you there when they were taken?

"A. Yes, sir."

2. On page of the typewritten copy (line not specified), and on page 80, sixth line from the top, after the clause, "Received in evidence", insert: "subject to counsel's objection and reserve all their rights under the objection."

* * * * * *

"Mr. Hamlin: Your Honor, please, there is one feature about this matter that might be objectionable, aside from the other objections which were made prior to this and which were denied, and you probably know that this man was alleged to have been tried and implicated in another case?

"The Court: I know nothing about it.

"Mr. Hamlin: And the Government may want to inject something about it.

"The Court: I am only trying him for one thing, as charged here, with entering into a conspiracy with this woman with reference to the violation of the Mann Act for the purpose of transporting a woman for illegal purposes.

"Mr. Anderson: I will admit—

"The Court: This means nothing to me. I don't know anything about it.

* * * * * *

"The Court: Let them be received in evidence as the testimony of this witness as to the conversation—as to the statements made, subject to the objection of the defendant to the effect that none of it is admissible upon the grounds previously stated, and subject to the further objection that no part thereof that refers to other crimes has any bearing on this case and is wholly immaterial and irrelevant. Doesn't that preserve your rights?

* * * * * *

"Mr. Anderson: I offer then the statement of Miss Louise Rolfe taken at 4:20 p. m., February 27th, 1929 as GOVERNMENT'S EXHIBIT 89, and the statement of Louise Rolfe taken on February 28, 1929 at 3:00 o'clock p. m., as GOV-

ERNMENT'S EXHIBIT 90, and the statement of what is here designated Jack McGurn, taken on February 27, 1929, at 1:15 p. m., as GOVERNMENT'S EXHIBIT 91.

"Mr. Hamlin: Your Honor, please, I don't presume it is necessary for me to elaborate on the matter of our objections.

"The Court: If I haven't fully stated your objections and you want to make a more complete statement, you may do so.

"Mr. Hamlin: Counsel for the defendants object for two fundamental reasons; primarily, because statements of that type are not admissible in evidence against either one of the defendants, because of the fact that they cannot go on the witness stand and deny those statements or in any way refute them, and for the further fact that they are introduced into this record for the purpose of prejudicing the Court against the defendants, and there are a lot of matters in there which are irrelevant, immaterial and incompetent.

"The Court: May be received, subject to those objections, and as I said heretofore, counsel may indicate at his convenience those parts to which he expressly objects on the ground they relate to other matters, which are wholly irrelevant and immaterial, and I shall endeavor to strike them out so that they will not be in the record.

"Which said documents were received in evidence as GOVERNMENT'S EXHIBITS 89, 90, and 91."

On page of the typewritten copy (line not specified), and on page 84 of the printed copies, seventeenth line from the top, after the clause, "were admitted in evidence", insert the following:

* * * * * *

"Mr. Anderson: I now make formal offer of all of the exhibits marked for identification from 1 to 95 inclusive, except that there is no number 69 and no number 82, and I ask that they be considered as marked in evidence under those numbers under which they are marked for identification.

"The Court: Let them be admitted subject to such objections as have been made by counsel.

"Mr. Anderson: I also offer in evidence as GOVERNMENT'S EXHIBITS * * * GOVERNMENT'S EXHIBITS 96, 97, 98, 99 and 100.

* * * * * *

"Mr. Hamlin: Objected to under the same objections we had before.

"The Court: May be received subject to the objection.

* * * * * *

"Mr. Hamlin: And as to these alleged letters or documents or papers, whatever they might be, and these photogarphs that were in this trunk that was searched by the police who went into the room illegally, without any search warrant and without any right, I also move that (they) be stricken from the record.

"The Court: That may stand subject to the motion."

Dated Dec. 29th, 1931.

HARRY F. HAMLIN
CHARLES G. F. WAHLE
Counsel for Appellants.
By HARRY F. HAMLIN

GEORGE E. Q. JOHNSON
George E. Q. Johnson
Counsel for Appellee.

(Endorsed) No. 4649 In the United States Circuit Court of Appeals for the Seventh Circuit. Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro and Louise Rolfe, Appellants, vs. United States of America, Appellee. Stipulations as to Revisions and Corrections of the Transcript of Record. Filed Dec 29 1931 Frederick G. Campbell, Clerk. Law Offices Hamlin & Cleary, 123 West Madison Street, Chicago Phone Randolph 2734.

Dec. 31. IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Jack Gerabri, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe, *Appellants,*	No. 4649.
vs. United States of America, *Appellee.*	

ORDER.

On Motion of Harry F. Hamlin and Charles G. F. Wahle, Counsel for Appellants, It Is Hereby Ordered, that the stipulations dated December 29, 1931 and entered into between Jack Gebardi alias Jack McGurn, and Louise Rolfe, Appellants, and the United States of America, Appellee, by their respective attorneys, revising and correcting certain errors and omissions in the transcript of record, heretofore filed in the above entitled cause, be made a part of the said transcript of record.

It Is Further Ordered that the Clerk of this Court make corrections and revisions in the original and printed transcripts as per stipulations.

Enter:

EVAN A. EVANS
Judge.

Dated: Chicago, Illinois, Dec. 31, A. D. 1931.

(Endorsed) No. 4649 In the United States Circuit Court of Appeals for the Seventh Circuit Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, Appellants, vs. United States of America, Appellee. Order Filed Dec 31 1931 Frederick G. Campbell, Clerk. Law Offices Hamlin & Cleary, 123 West Madison Street, Chicago Phone Randolph 2734.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 166, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twenty-second day of October, 1931, on which the following entitled cause was heard and determined:

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,

Appellants,

vs.

The United States of America,

Appellee,

No. 4649, October Term, 1931, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of May, A. D. 1932.

FREDERICK G. CAMPBELL,
(Seal) *Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the seventh day of October, 1930, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-Fifth.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,
4649 *vs.*
The United States of America.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And on, to-wit: the nineteenth day of September, 1931, there was filed in the office of the Clerk of this Court an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 4649. October Term 1930.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,

Appellants,

vs.

The United States of America,

Appellee.

The Clerk will enter my appearance as Counsel for the Appellants.

HARRY F. HAMLIN,
123 W. Madison St., Chicago, Ill.
CHARLES G. F. WAHLE,
220 Madison Ave., New York, N. Y.

Endorsed: Filed September 19, 1931, Frederick G. Campbell, Clerk.

And on the same day, to-wit: on the nineteenth day of September, 1931, there was filed in the office of the Clerk of this Court a certificate to original exhibits, which said certificate is in the words and figures following, to-wit:

United States of America,
Northern District of Illinois, } ss.
Eastern Division.

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify that I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit, photostatic copies of certain original exhibits in the case entered United States vs. Jack Gebardi otherwise called Jack McGurn otherwise called Jim Vincent D'oro and Louise Rolfe, Case No. 20592, said exhibits are marked as follows, to wit:

Government Exhibits:

Exhibit A, Paper Exhibit.
Exhibits 1 to 68 Inclusive, Paper Exhibits.
Exhibit 69 out.
Exhibits 80 to 81 Inclusive, Paper Exhibits.
Exhibit 82 out.
Exhibits 83 to 100 Inclusive, Paper Exhibits.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago this seventeenth day of September A. D. 1931.

CHARLES M. BATES,
(Seal) *Clerk.*

Endorsed: Filed Sept. 19, 1931, Frederick G. Campbell, Clerk.

And afterwards, to-wit: on the twenty-first day of September, 1931, there was filed in the office of the Clerk of this Court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 4649. October Term, 1930.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,

Appellants,

vs.

The United States of America,

Appellee.

The Clerk will enter my appearance as Counsel for Appellee.

GEORGE E. Q. JOHNSON,
United States Attorney.

Endorsed: Filed September 21, 1931, Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the sixth day of October, 1931, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-One, and of our Independence the One Hundred and Fifty-Sixth.

And afterwards, to-wit: on the fifth day of November, 1931, there was filed in the office of the Clerk of this Court a notice and motion to correct record, which said notice and motion are in the words and figures, following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
No. 4649.

NOTICE.

To: Harry F. Hamlin, Esq., Charles G. F. Wahle, Esq., Counsel for Appellants, 123 West Madison Street, Chicago, Illinois.

Please Take Notice, that on Wednesday, November 4, 1931 at nine-thirty o'clock in the morning sharp, I shall appear before the Honorable Judges of the United States Circuit Court of Appeals in the courtroom in the Federal Building, Chicago, Illinois, usually occupied by them as such courtroom, and shall present a written motion, a copy of which it attached hereto, moving the court to make the stipulations with reference to the transcript of record a part of the transcript of record in this case, at which time and place you may be present if you so see fit.

GEORGE E. Q. JOHNSON,
George E. Q. Johnson,
United States Attorney,
Counsel for Appellee.

Received a copy of the above and foregoing notice and motion attached thereto this 3rd day of November, A. D. 1931.

HARRY C. HAMLIN,
Attorneys for Appellants.

IN THE UNITES STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Jack Gebardi alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
No. 4649.

MOTION.

Now comes George E. Q. Johnson, United States Attorney for the Northern District of Illinois, and presents stipulations entered into between the United States of America, appellee, by George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Eastern Division, and Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, Appellants, by their attorneys, whereby the parties hereto have stipulated as to certain revisions and corrections of the transcript of record, and moves this Honorable Court to enter an order making the said stipulations a part of the transcript of record in the above cause.

GEORGE E. Q. JOHNSON,
United States Attorney.

Dated: Chicago, Illinois,
November 5, A. D. 1931.

Endorsed: Filed Nov. 5, 1931, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the fifth day of November, 1931, there was filed in the office of the Clerk of this Court a stipulation as to correction of record, which said stipulation is not copied here, as the same appears on pages 155 and 156 of the printed record in this cause, certified herewith.

And on the same day, to-wit: On the fifth day of November, 1931, an order approving stipulation as to correction of record was entered, which said order is not copied here, as the same appears on page 157 of the printed record in this cause, certified herewith.

And afterwards, to-wit: on the twenty-ninth day of December, 1931, there was filed in the office of the Clerk of this Court a motion to make correction in record, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

Jack Gebardi alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
United States of America,
Appellee.
No. 4649.

MOTION.

Now comes George E. Q. Johnson, United States Attorney for the Northern District of Illinois, and presents stipulations entered into between the United States of America, appellee, by George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Eastern Division, and Jack Gebardi, alias Jack McGurn alias Jim Vincent D'Oro and Louise Rolfe, appellants, by their attorneys, whereby the parties hereto have stipulated as to certain revisions and corrections of the transcript of record, and moves this Honorable Court to enter an order making the said corrections and revisions on the original and printed transcripts.

GEORGE E. Q. JOHNSON,
United States Attorney.

Dated: Chicago, Illinois,
....., A. D. .....

Endorsed: Filed Dec. 29, 1931, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-ninth day of December, 1931, there was filed in the office of the Clerk of this Court a stipulation to make correction in record, which said stipulation is not copied here, as the same appears on page 159 of the printed record of this cause, certified herewith.

And on the same day, to-wit: On the twenty-ninth day of December, 1931, an order was entered that corrections be made in the record, which said order is not copied here, as the same appears on page 160 of the printed record of this cause, certified herewith.

And on the same day, to-wit: On the twenty-ninth day of December, 1931, there was filed in the office of the Clerk of this Court a stipulation to make revisions and corrections in the record, which said stipulation is not copied here, as the same appears on pages 161 and 165, both inclusive, of the printed record in this cause, certified herewith.

And afterwards, to-wit: On the thirty-first day of December, 1931, an order that revisions and corrections be made in the record was entered, which said order is not copied here, as the same appears on page 166 of the printed record in this cause, certified herewith.

And afterwards, to-wit: On the twelfth day of January, 1932, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 12, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.
Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,
4649 *vs.*
The United States of America.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on February 10, 1932.

And afterwards, to-wit: On the tenth day of February, 1932, the following further proceedings were had and entered of record, to-wit:

Wednesday, February 10, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.
Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,
4649 *vs.*
The United States of America.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Charles G. F. Wahle and Mr. Harry F. Hamlin, counsel for the appellants,

and by Mr. Daniel Anderson, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the second day of April, 1932, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4649. October Term, 1931, January Session, 1932.

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,
Appellants,
vs.
The United States of America,
Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

April 2, 1932.

Before ALSCHULER, EVANS, and SPARKS, *Circuit Judges.*

Appellants were convicted on three separate conspiracy counts, each of which had for its alleged object a violation of Section 398, Title 18, U. S. C. A.; namely, the transportation of a woman from one state to another for immoral purposes. Gebardi was given a penitentiary sentence on each count, the sentences to run consecutively and parole to become effective after the sentence on the first count had been served. Rolfe was given a county jail sentence.

The assigned errors deal with the sufficiency of the indictment, the admission of evidence against appellants' objection, and the refusal of the court to dismiss the case because the evidence failed to establish any one of the conspiracies

charged. Appellants also deny that the evidence established three separate conspiracies.

Briefly and generally stated, the evidence showed that Gebardi, a married man, and Louise Rolfe, an unmarried woman, on December 18, 1928, pursuant to plans previously matured, traveled by train from Chicago to Miami, Florida; that Gebardi paid the expenses; and that such trip was for immoral purposes. A second trip was made January 25, 1929, under like circumstances and for like purposes from Gulport, Mississippi, to Chicago, and a third trip was made from Chicago to Jacksonville, Florida for the same purpose and under similar conditions. The three counts charge three separate conspiracies, each one having one of the three transportations for immoral purposes as its object.

EVANS, *Circuit Judge.* The attack on the indictment and part of appellants' assault on the sufficiency of the facts to support the conviction may be treated together. Their position may be stated thus: A and B are not guilty of a conspiracy to violate Section 398, Title 18, U. S. C. A. upon a showing that A, a married man, pursuant to agreement between them, caused B, a woman, to be transported from state C to state D that the said A and B might have sexual relations in state D.

This contention we dispose of without discussion on authority of *United States* v. *Holte,* 236 U. S. 140. Counsel for appellants have advanced arguments not considered in the opinion in this case, but we are not prepared to reject the authority for such reason. In fact, we are unable to say that the arguments which appellants make in this case were not advanced in the Holte Case, although they were not considered in the opinion. See also *Corbett* v. *United States,* 299 Fed. 27; *O'Leary and Sullivan* v. *United States,* 53 F. (2d) 956.

Sufficiency of the Evidence. Aside from certain statements made after the three trips were completed (the subject of another assignment of error and therefore now excluded in considering the evidence), it is argued by appellants that the only proof tending to establish the conspiracies was to be found in the evidence which established the substantive crime; that is, the violation of the so-called Mann Act. In short, it is argued that even though A, a married man, be guilty of transporting B, a woman, from one state to another for immoral purposes, such evidence is insufficient to establish the crime of conspiring to commit said substantive crime by the said two

parties. This court has on several occasions held that proof of the substantive offense alone is not sufficient to establish the crime of conspiracy to commit such offense. *Biemer* v. *United States,* 54 F. (2d) 1045; *Allen* v. *United States,* 4 F. (2d) 688.

Whether the rule to the effect that proof establishing the substantive offense is in and of itself insufficient to establish the conspiracy to commit the offense is technically and in all instances correct, we need not decide. Certainly, instances may be readily suggested where it would be well nigh impossible for the Government to establish the substantive offense without furnishing proof of a conspiracy to commit the offense. Likewise, many cases may be readily conceived where the proof of the substantive offense would not suggest, to say nothing of establish, the crime of conspiracy. In this case, there was evidence which, together with the proof of commission of the substantive offense, not only supports the charge of conspiracy but persuasively establishes its existence. When, as in the instant case, it is shown that A, a married man, purchased for himself and B, a woman, tickets on railroad trains, which were used to transport, and did transport, both A and B from one state to another, and it further appeared that their trip was for immoral purposes and that while on their trip, they lived as husband and wife, and it further appeared that the two parties met at a depot in the city of Chicago to take the special through train upon which A had secured passage for both of them, credulity would be strained beyond the cracking point to accept as true the suggestion that said parties met, thus prepared to make the trip, accidently rather than premeditatedly.

In the instant case, it further appeared that before starting on their trips, Gebardi secured and paid for a room in a hotel in Chicago which Rolfe occupied; that before starting on the trips, Gebardi purchased the tickets which provided for the passage, together with sleeping car service on trains leaving at a certain hour from a certain station; that on the date and at the time and at the place designated in the city of Chicago, both parties appeared. Unexplained and unchallenged by either appellant, this statement of facts justifies, if it does not necessitate, a finding of prearrangement; that is, a planning, a confederacy—a conspiracy, as charged in the indictment.

It is further argued, however, that if any conspiracy were shown, it was a single one and not three separate ones. Again the record is barren of proof on the part of either appellant,

which disputes, explains, or qualifies the inferences which arose from the undisputed facts established by the Government. This evidence, produced by the prosecution, consisted of railroad tickets, Pullman tickets, the testimony of hotelkeepers, railway and Pullman employees, and certain notes which passed between appellants. The court was amply justified in finding, we think, that when the parties left Chicago for Miami on the 18th of December, they did not contemplate a trip on January 25th from Chicago to Jacksonville, Florida. This second trip was separate and distinct from the first one and was undertaken pursuant to plans perfected by appellants after the first plan had been carried out in whole or in part. Nor is there any evidence from which the court might have found that the conspiracy included not only the said trips on the two different dates from Chicago to Miami and from Chicago to Jacksonville, a month apart, but that said appellants should go from Gulfport to Chicago. The trips were entirely separate; the actions of Gebardi in securing the transportation were separate and disassociated one from the other, and we see no escape from the finding that the three trips were separate and the conspiracies preceding them were separate and distinct one from the other.

It is needless to further observe that this court's review of the record was for the limited purpose of ascertaining whether any evidence appeared to support the trial court's finding (a jury having been waived), not to make a finding of fact.

Rulings on Admission of Evidence. Over objection, statements made by each appellant to police officers on February 27, 1929, were received in evidence. Appellants argue that the statements were prejudicial and not receivable against both appellants because the conspiracy, if any existed, was at an end before they were made. Appellant Rolfe's statement was made February 27 at the office of Commissioner Stege of the Detective Bureau. Gebardi was not present. Gebardi's statement was made on the same day in a room in the Stevens Hotel where the two appellants were living as husband and wife at the time. From the statement of Gebardi, it was inferable that appellant Rolfe was present at the time it was made.

Nothing appeared in either statement which was not conclusively established by other testimony. No evidence was given by either appellant on the trial, and the Government's case thus uncontradictedly established the trips, established the immoral cohabitation under assumed names, as husband

and wife, and this was what the both statements objected to, disclosed. The statement of each appellant thus voluntarily made, even though to a police officer investigating a state crime, was admissible against the party making it regardless of whether the conspiracy had terminated. Likewise, the statement made by Gebardi in the presence of Rolfe was admissible against both of them. Rolfe's own statement, admissible against her, was but a restatement of what Gebardi said in the presence of the officer with Rolfe present. However, it does not appear so conclusively as to bar these statements, that the last conspiracy had ended when the statements were made.

One count of the indictment charged a conspiracy to violate the Mann Act by Gebardi's transporting Rolfe on January 25 from Gulfport, Mississippi, to Chicago, for immoral purposes. When was this conspiracy at an end? When was the substantive crime completed? Appellants contend that Chicago was their home and the substantive crime, as well as the conspiracy (conceding both to be established), was ended upon their arrival in Chicago. Proof does not support this argument. The evidence does not show Gebardi's residence any more definitely than it does his real name. Statements made by both parties to the hotel clerk and postmen in the South left his residence and his name involved in doubt. But, if it be admitted that Chicago was his residence, it does not follow that the S Hotel in Chicago where he lived with Rolfe, as man and wife, was his home, in view of other evidence that he had a wife and child living somewhere else in Chicago.

The foregoing observations respecting the statements made by appellants apply to the evidence of the police officers and witnesses who were present at the time the statements were made or immediately preceding their making. The same principle applies to the testimony of the Miami policeman. This testimony bore upon the immoral purpose for which Rolfe was transported and was necessary to establish the relation between the conspiracy and the substantive offense. Likewise, the exhibit objected to—namely, a postcard of the Illinois Central Railway with a love note thereon addressed to Mr. D'Oro—was receivable for the same purpose, in view of the other proof that appellants registered in hotels in the South as Mr. and Mrs. Vincent D'Oro. The testimony was not received to establish the conspiracy as such, nor the transporation as such. It was admitted because it tended to es-

tablish that the transportation, proved by other testimony, was for immoral purposes.

Inasmuch as the conspiracy could be established only by showing that the object thereof was to violate the Mann Act, it was incumbent on the Government to show the alleged unlawful enterprise contemplated transportation *for immoral purposes.* In other words, the charge necessitated proof (a) that Gebardi and Rolfe conspired to have Gebardi transport Rolfe from one state to another and (b) that such transportation was for immoral purposes. While the proof of the fact (b) was ultimately established to a moral certainty, the Government was at liberty to introduce all its evidence bearing upon such issue, including circumstantial evidence from which logical inferences were deducible pointing strongly to such immoral purpose. Likewise, it cannot be said that the evidence showed conclusively that the conspiracy was ended at a time when the substantive offense was being committed, at which time the statements of the coconspirators were made.

Other assignments of error dealing with rulings on evidence and the sufficiency of the proof to establish three separate conspiracies, as well as the existence of any of the conspiracies, have been duly considered and rejected.

The judgment is affirmed.

ALSCHULER, *Circuit Judge,* dissenting. It seems to me the evidence tended to show only the substantive offense denounced by the "White Slave Act," but nothing beyond. There was evidence indicating that this man and woman, long and intimately acquainted in Chicago, Illinois, left there December 22, 1928, and rode together in a sleeping car to the far Southeast, staying together as husband and wife at Miami, Florida, and at other places, and no doubt having their adulterous relations as an object of their journey. On January 24, 1929, they returned to Chicago, and the next day again left together for the South. After several stops they came to Edgewater Gulf, Mississippi, where they stayed together at a hotel for a few days, arriving at Chicago January 31. They went to a hotel there, living together for about four weeks, when they were arrested. There is evidence that at Edgewater Gulf McGurn ordered and paid for tickets to Chicago, but no evidence to show who bought the tickets on either trip from Chicago, or that either of them transported or caused to be transported, or combined, confederated, or conspired with themselves or with anyone else to transport

the other. All of this evidence would tend directly to establish the substantive offense; and had there been proof that he bought the tickets for the journeys from Chicago, it would have been but further evidence of the substantive offense.

It has been decided that evidence which shows only the commission of a substantive offense falls short of showing a conspiracy to commit the offense. *United States* v. *Heitler*, 274 Fed. 401 (D. C.); *Salla* v. *United States*, 104 Fed. 544 (C. C. A. 9); *Linde* v. *United States*, 13 F. (2d) 59 (C. C. A. 8)—wherein were cited the Heitler case, *Stubbs* v. *United States*, 249 Fed. 571 (C. C. A. 9), and *Bell* v. *United States*, 2 F. (2d) 543 (C. C. A. 8); *Dickerson* v. *United States*, 18 F. (2d) 887 (C. C. A. 8). This court has so held in *Allen* v. *United States*, 4 F. (2d) 688, and *Biemer* v. *United States*, 54 F. (2d) 1045, cited in the opinion.

If, as is alleged and as the government sought to establish, they were to travel with the intent of having these adulterous relations, the consent of the parties was, in the nature of things, necessary to be shown as a part of the substantive offense. To the extent therefore that this consent might be inferred from the fact that they rode together and actually sustained adulterous relations, it would be only further proof of the substantive offense.

But inference or even direct proof of her willingness to travel with him falls short of proof that they conspired together that she be transported. The statutory crime is in narrow compass. It is the transportation or the causing to be transported for the indicated purpose. If the party charged did not transport the woman or cause her to be transported, there is no crime committed under this law, regardless of what else happens. A woman transporting herself for the improper purpose shown does not violate the act. Her transportation must be by or caused by another, thus requiring on her part a degree of cooperation or concert for the commission of the substantive crime, unless the transportation was by intimidation, force, or fraud, which is not here claimed or shown. That same cooperation necessary to indicate the substantive crime will not alone serve to show a conspiracy to commit it.

But I do not believe that under the facts here appearing the charge of conspiracy would in any event lie against this woman, however sustainable against the man in case it appeared (which it did not) that he had conspired with a third person to effect her unlawful transportation. The majority

opinion is rested on the authority of *United States* v. *Holte*, 236 U. S. 140, which dealt with a demurrer by the woman to an indictment of a man and woman charging them with conspiracy to cause her to be transported interstate for purposes of prostitution. The court said it did not have to consider what evidence would be necessary to convict a woman under such an indictment, "but only to decide whether it is impossible for the transported woman to be guilty of a crime in conspiring as alleged."

If the supposititious case stated in that opinion indicates the general class of cases which the court had in mind as such where the transported woman might be guilty of conspiracy to have herself transported, it is so far from the class indicated by the facts in the instant case as quite to exclude it. Here we are not dealing with the indictment merely, but with the evidence. I cannot believe that where all that the record shows is the likelihood that before such a journey actually commenced the woman manifested a willingness to undertake it, her crime of conspiracy thereby appears.

Let another case be supposed. A hectic Chicago youth over-persuades his fair and perhaps innocent inamorata into consenting that he drive her to Gary, Indiana, there to indulge in sexual relations with him. He commits the overt act of telephoning her to learn if she is ready to start, but she declines to go, and the project is at an end. Has she thereby committed the crime of conspiracy? Yes—if the Holte case is to be applied as the prosecution here contends, and as was held in *Corbett* v. *United States*, 299 Fed. 27. No—if the statute and the Holte case must be so limited as would make impossible such a travesty as her conviction for conspiracy in the case I have stated.

Nothing appears here which is more incriminating than my illustrative case. Proof of the substantive act only has no bearing on the conspiracy save as it may supply the essential element of an overt act. The personality of the alleged conspirators is immaterial. They may be lamblike and sweet as in my supposed case may be assumed, or long steeped in moral depravity as the evidence tends to show these parties were. The most that is claimed to be shown against them is that they undertook these travels for their own delectation through sex relations with each other.

I do not believe that the statute or the Holte case contemplated that upon such facts conspiracy of the woman to

be transported could be predicated. I am of opinion that this woman should not have been convicted of conspiracy, and there being no evidence that McGurn conspired with anyone else, he too should not have been convicted on this charge.

But assuming conspiracy was shown, I do not believe the evidence shows a series of conspiracies, unless it may be said that each time the persons in their travels approached and crossed another state line or halted in their journey a new conspiracy to further transport her is thereby presumptively manifested.

If a conspiracy is necessarily to be presumed from the substantive acts shown, it is far more reasonable to presume that there was a single general conspiracy to travel together interstate for this unlawful purpose, than that a new conspiracy was formed for each section of their travels. The contention that upon this evidence there appears one conspiracy to transport the woman from Chicago, and a separate conspiracy to transport her back to Chicago, should find refutation in its mere statement.

For the purposes of justifying the admission of certain statements of appellants made after their arrest and about four weeks after the final return to Chicago, it is suggested in the majority opinion that at the time the statements were made the conspiracy was still afoot. If this this purpose the conspiracy remained in continuous being, it should not be held to have been twice theretofore terminated in order that each subsequent move might be regarded as the object of a brand-new conspiracy.

To my mind the judgment against these appellants should be reversed in toto, but in any event to the extent that more than one conspiracy has been adjudged.

Endorsed: Filed April 2, 1932, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the second day of April, 1932, the following further proceedings were had and entered of record, to-wit:

Saturday, April 2, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Jack Gebardi alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe
4649 *vs.*
The United States of America.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

And afterwards, to-wit: on the twentieth day of April, 1932, there was filed in the office of the Clerk of this Court an appearance of additional counsel for appellants, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 4649. October Term, 1931.

Jack McGurn, *et al.*,

vs.

The United States of America.

The Clerk will enter my appearance as counsel for the Appellants.

WILLIAM F. WAUGH,
J. J. GOSHKIN,
140 S. Dearborn St., Chicago.

Endorsed: Filed April 20, 1932, Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twentieth day of April, 1932, the following further proceedings were had and entered of record, to-wit:

Wednesday, April 20, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.
Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. James H. Wilkerson, District Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.

4649 Jack Gebardi, *et al.*, *vs.* The United States of America. } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered that Mr. William F. Waugh and Mr. J. J. Goshkin may file their appearances as additional counsel for the appellants in this cause.

And afterwards, to-wit: On the twenty-second day of April, 1932, there was filed in the office of the Clerk of this Court a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to-wit: On the tweny-sixth day of April, 1932, there was filed in the office of the Clerk of this Court an answer to the petition for a rehearing, which said answer to petition for a rehearing is not copied here.

And afterwards, to-wit: On the third day of May, 1932, the following further proceedings were had and entered of record, to-wit:

Tuesday, May 3, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. James H. Wilkerson, District Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

	Jack Gebardi, *et al.*,	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
4649	*vs.*	
	The United States of America.	

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

And afterwards, to-wit: On the fourth day of May, 1932, the following further proceedings were had and entered of record, to-wit:

Wednesday, May 4, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.

Jack Gebardi, *et al.*,
4649 *vs.*
The United States of America.

} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of Mr. William F. Waugh, counsel for the appellants, it is now here ordered that the mandate in this cause be, and the same is hereby stayed until the further order of this Court, on condition that counsel for appellants file in the Supreme Court of the United States within twenty days from this date a petition for a writ of certiorari and brief in support of same. Proof of the filing of said petition and brief in said Court to be promptly filed in this Court by counsel for appellants.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing Printed pages, numbered from 169 to 189, inclusive, contain a true copy of the proceedings had and papers filed (excepting the briefs of counsel and motions, stipulations and orders relating to filing briefs, petition for a rehearing, and answer thereto and also excepting stipulations and orders relating to revisions and corrections in the record which said stipulations and orders appear in the printed record filed on October 22, 1931, a copy of which is certified herewith, in the case of

Jack Gebardi alias Jack McGurn alias Jim Vincent D'Oro, and Louise Rolfe,

Appellants,

vs.

The United States of America,

Appellee,

No. 4649, October Term, 1931, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 6th day of May, A. D. 1932.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

MAY 23 1

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

No. [redacted] 97

JACK GEBARDI and LOUISE ROLFE GEBARDI,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

WILLIAM F. WAUGH,
Attorney for Jack Gebardi and Louise Rolfe Gebardi, Petitioners.

CHICAGO LAW PRINTING CO., 101 S. WELLS ST. FRANKLIN 6821

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1931.

No.

JACK GEBARDI and LOUISE ROLFE GEBARDI,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Jack Gebardi and Louise Rolfe Gebardi, hereinafter referred to as Louise Rolfe, respecfully seek a review of a decision of the Circuit Court of Appeals for the Seventh Circuit affirming their conviction upon an indictment containing three counts charging them with having conspired to violate Section 398, Title 18, U. S. C. A.[1]

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[1]Sec. 398, Title 18, U. S. C. A.

Any person who shall knowingly transport or cause to be tansported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished, etc.

(White Slave Traffic Act), in violation of Section 88, Title 18, U. S. C. A.[2], and sentencing the petitioner Gebardi to imprisonment in the penitentiary for a period of two years on each of Counts 1, 2 and 3, the sentences to run consecutively. The sentences on Counts 2 and 3 are to be suspended at the expiration of the sentence on Count 1, and the petitioner to be placed on probation for a period of five years. The petitioner Rolfe was sentenced to be imprisoned in the Cook County jail at Chicago, Illinois for a period of four months.

A.

Summary Statement of Matters Involved.

First. This case presents the question as to whether or not an agreement between a man and woman to transport the woman in interstate commerce for the purpose of having sexual intercourse during and following a journey, practically continuous, from Chicago, Illinois, to Miami, Florida, to Chicago, to Jacksonville, Florida, to St. Augustine, Florida, to Gulfport, Mississippi, and back to Chicago, was punishable as three separate and distinct conspiracies to violate Section 398, Title 18, U. S. C. A.

Second. The question is presented as to whether or not the decision in *U. S.* v. *Holte,* 236 U. S. 140, is authority for the proposition that the consent of a woman to travel

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[2]Sec. 88, Title 18, U. S. C. A.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

with a man in interstate commerce for the purpose of having sexual intercourse with him constitutes a conspiracy to transport the woman.

Third. This case presents the question as to whether or not proof of sexual intercourse, during and following transportation in interstate commerce, between a married man and an unmarried woman who had lived in a state of adultery for more than three years prior thereto, established that the transportation was for an immoral purpose.

B.

Reasons Relied on for Allowance of the Writ.

1. The holding of the Circuit Court of Appeals that an agreement between a man and woman to transport the woman in interstate commerce for the purpose of having sexual intercourse during and following said journey was punishable as three separate and distinct conspiracies to violate Section 398, Title 18, U. S. C. A., is in conflict with the weight of authority and is violative of the rights of petitioners under the Fifth Amendment to the Constitution of the United States.

2. The Circuit Court of Appeals has decided an important question of general law in a way probably untenable in holding the decision in *U. S.* v. *Holte*, 236 U. S. 140, as authority for the proposition that the consent of a woman to travel with a man in interstate commerce for the purpose of having sexual intercourse with him constitutes a conspiracy to transport the woman.

3. The holding of the Circuit Court of Appeals that proof of sexual intercourse, during and following the transportation in interstate commerce, between a man and a woman who had lived in a state of adultery prior thereto,

established that the transportation was for an immoral purpose, is in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Alpert* v. *U. S.*, 12 Fed. (2d), 352; the Circuit Court of Appeals for the Fourth Circuit in *Fisher* v. *U. S.*, 266 Fed. 667; *Hunter* v. *U. S.*, 45 Fed. (2d), 55; and *Van Pelt* v. *U. S.*, 240 Fed. 346; and the Circuit Court of Appeals for the Eighth Circuit in *Biggerstaff* v. *U. S.*, 260 Fed. 926; *Drossos* v. *U. S.*, 16 Fed. (2d), 833, and *Sloan* v. *U. S.*, 287 Fed. 91.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket, No. 4649, *Jack Gebardi, alias Jack McGurn, alias Jim Vincent D'Oro, and Louise Rolfe, Appellants* v. *The United States of America, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the Court, and for such further relief as to this Court may seem proper.

Jack Gebardi,
Louise Rolfe Gebardi,
By William F. Waugh,
Their Attorney.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (not yet reported) appears in full in the Record, pages 177-185. No formal opinion was rendered by the District Court.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Section 347, Title 28, U. S. C. A.

III.

Statement of the Case.

Jack Gebardi, a married man, and Louise Rolfe, an unmarried woman, both of Chicago, Illinois, who had had adulterous relations for a period of from three to seven years (R. 110-114), on or about December 22, 1928, went from Chicago, Illinois, to Miami, Florida, and while there resided as man and wife at the Dallas Park Hotel (R. 112) for about a week, and at 453 North West 3rd Street for about three weeks (R. 22), returning to Chicago via Jacksonville on about January 24, 1929 (R. 112), stayed at the LaSalle Hotel one day (R. 27, 39), and on January 25, 1929, after adding Anthony Gebardi, a brother, to their party, left for Jacksonville, Florida (R. 111), stayed there one hour and went on to St. Augustine (R. 111), remained

there four hours, and then continued on to Biloxi, Mississippi, where they registered at the Edgewater Gulf Hotel as Mr. and Mrs. Vincent D'Oro and Anthony D'Oro (R. 107, Exs. 78, 79). Three days later they boarded a train at Gulfport, Mississippi, and returned to Chicago (R. 111). On their arrival, the petitioners went to live at the Stevens Hotel (R. 111).

The indictment charges three conspiracies to transport Rolfe in interstate commerce for the purpose of their having unlawful sexual intercourse. Count I is based upon that portion of the trip from Chicago to Miami (R. 3); Count III, on that portion of the journey from Chicago to Jacksonville (R. 5); and Count II, the return trip from Gulfport to Chicago (R. 4). Before the trial, Gebardi was divorced from his first wife and married Rolfe (R. 16). The case was tried without the intervention of a jury.

IV.

Specifications of Error.

1. The Circuit Court of Appeals erred in holding that the agreement between Gebardi and Rolfe was punishable as three separate and distinct conspiracies.

2. The Circuit Court of Appeals erred in holding that the consent of Rolfe to travel with Gebardi in interstate commerce for the purpose of having sexual intercourse with him constitutes a conspiracy to violate the White Slave Traffic Act.

3. The Circuit Court of Appeals erred in holding that proof of sexual intercourse, during and following transportation in interstate commerce, between Gebardi and Rolfe, who had lived in a state of adultery prior thereto, established that the transportation was for an immoral purpose.

V.

Argument.

(1) SINGLE CONSPIRACY PUNISHED AS THREE SEPARATE AND DISTINCT OFFENSES.

The Circuit Court of Appeals in this case has approved the action of the government in the splitting up of one conspiracy and the prosecution of petitioners on an indictment containing three counts, each of which said counts is predicated upon a part of the same crime, and the imposition of sentences on the said three counts, which are treble the amount which could have been imposed for one offense.

In that connection we desire to invite the Court's attention to the case of *Murphy* v. *U. S.*, 285 Fed. 801 (C. C. A. 7th Cir.), where the question presented was whether or not a conviction based upon two counts, one charging a conspiracy to rob, and the other charging a conspiracy to have and conceal the property so secured, could be maintained. On page 817 the Court says:

> "What is ordinarily contemplated when robbery is committed? Does the robber intend merely to part the robbed of his property? Or does he intend to accomplish two things—the unlawful taking and the unlawful keeping of another's property? And, with more pertinency, may it not be asked whether a criminal conspiracy to rob, conceived and successfully carried out by A., B., and C., may be divided and redivided? Can it be said that A., B., and C., in entering upon the criminal enterprise to rob the United States mail, did not as a part of that conspiracy intend to unlawfully

take the mail pouches *and to retain the possession of the property* secured through this robbery?

* * *

The Fifth Amendment to the Constitution protects all against double punishment for the same offense. Its enforcement and its application demand a test which is a practical, not a theoretical one. It is the evidence, and not the theory of the pleader, to which we must look to determine this issue. And it is needless to add that one accused of crime, regardless of kind or magnitude of the offense, is entitled to the protection of this section of the Constitution. The sentence on this count therefore cannot be sustained."

This Court has held in two cases, *In re* Snow, 120 U. S. 274, and *Hans Nielsen, Petitioner,* 131 U. S. 176, that the offense of cohabiting is a continuing one, and can be committed but once for the purposes of indictment or prosecution. Although the White Slave Traffic Act was not there under consideration, the same principles are applicable. On page 282 of the *Snow case,* the Court says:

"On the same principle there might have been an indictment covering each of the thirty-five months, with imprisonment for seventeen years and a half and fines amounting to $10,500, or even an indictment covering every week, with imprisonment for seventy-four years and fines amounting to $44,400; and so on, *ad infinitum,* for smaller periods of time. It is to prevent such an application of penal laws, that the rule has obtained that a continuing offense of the character of the one in this case can be committed but once, for the purposes of indictment or prosecution, prior to the time the prosecution is instituted."

Lindley, District Judge, who entered the judgment and imposed the sentences complained of in the case at bar, in *U. S.* v. *Weiss*, 293 Fed. 992, in sustaining pleas of former jeopardy to an indictment charging conspiracy, recognized and followed the principles of law announced in the *Murphy* and *Snow cases*, in the following language (p. 994):

> "(1) At the threshold it must be noted that the government cannot split up one conspiracy into different indictments, and prosecute all of them, but that prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime. *Murphy* v. *U. S.* (C. C. A.) 285 Fed. 804, at page 816; *In re* Snow, 120 U. S. 274, 7 Sup. Ct. 556, 30 L. Ed. 658; 16 Corpus Juris, 270, and cases there cited."

We believe that the only logical conclusion which can be arrived at from the application of the foregoing principles to the case at bar, has been reached by Alschuler, Circuit Judge, who has summed the matter up in the following language in his dissenting opinion (Opinion, p. 9; R. 185):

> "But assuming conspiracy was shown, I do not believe the evidence shows a series of conspiracies, unless it may be said that each time the persons in their travels approached and crossed another state line or halted in their journey a new conspiracy to further transport her is thereby presumptively manifested.
>
> If a conspiracy is necessarily to be presumed from the substantive acts shown, it is far more reasonable to presume that there was a single general conspiracy

to travel together interstate for this unlawful purpose, than that a new conspiracy was formed for each section of their travels. The contention that upon this evidence there appears one conspiracy to transport the woman from Chicago, and a separate conspiracy to transport her back to Chicago, should find refutation in its mere statement."

(2) DECISION IN U. S. v. HOLTE, 236 U. S. 140, MISAPPLIED.

The Circuit Court of Appeals, in answer to an attack on the indictment and proof of the conspiracy alleged in this case, says the following (Opinion, p. 2, R. 178):

"This contention we dispose of without discussion on authority of *United States* v. *Holte,* 236 U. S. 140."

It is our contention that the majority of the court committed serious error in disposing of that contention without discussion. The *Holte case* merely decided that it was possible for a woman to be a co-conspirator under certain circumstances, and that the indictment would survive a demurrer. The case does not hold that the consent of a woman to be transported under any circumstances establishes her guilt as a conspirator. On this subject we desire to invite the attention of the court to the reasoning of Judge Alschuler as set out in the dissenting opinion (R. 183, 184):

"The majority opinion is rested on the authority of *United States* v. *Holte,* 236 U. S. 140, which dealt with a demurrer by the woman to an indictment of a man and woman charging them with conspiracy to cause her to be transported interstate for purposes of prostitution. The court said it did not have to consider

what evidence would be necessary to convict a woman under such an indictment, 'but only to decide whether it is impossible for the transported woman to be guilty of a crime in conspiring as alleged.'

If the supposititious case stated in that opinion indicates the general class of cases which the court had in mind as such where the transported woman might be guilty of conspiracy to have herself transported, it is so far from the class indicated by the facts in the instant case as quite to exclude it. Here we are not dealing with the indictment merely, but with the evidence. I cannot believe that where all that the record shows is the likelihood that before such a journey actually commenced the woman manifested a willingness to undertake it, her crime of conspiracy thereby appears."

Not only is the *Holte case* not controlling, but there is a distinction between the indictment in that case and the indictment in the case at bar. In the former case the indictment charged the man and woman with conspiracy to transport her from Illinois to Wisconsin for purposes of prostitution; this of course meant general promiscuity of intercourse and did not at all imply any sexual intercourse between the man and woman defendant. In the indictment in the instant case each count charges petitioners' purpose in their travels to be "unlawful sexual intercourse, they not then and there being husband and wife," to wit: Adultery ("they" referred to being indisputably petitioners, as the proof at the trial disclosed).

The indictment also charged that there were others than petitioners involved in the conspiracy, and it is conceivable that a number of persons may conspire that two of

them commit adultery. It may be, therefore, that the indictment would, under the rule in *U. S.* v. *Holte,* have successfully withstood an attack as to its sufficiency in law, but as the proof limited the activities entirely to petitioners (notwithstanding there was evidence that Gebardi's brother was with them on some part of the trip and that others lived with them in the house in Miami), there is neither proof nor contention that the brother or any of these other people were the unknown conspirators mentioned in the indictment.

Petitioners therefore come before this Honorable Court upon the record, which is the Government's proof, and urge that an unlawful conspiracy was not and could not under the facts have been proven against them, leaving the sufficiency of the indictment upon demurrer entirely out of this case.

It has been uniformly held and has always been recognized as the law that where the cooperation of two people is necessary to complete an act which when consummated is a crime, such cooperation constitutes the substantive crime and may not be bent to conspiracy to commit that offense.

United States v. *Dietrich,* 126 Fed. 664 (Cir. Ct., D. Neb.), supplies an instance of the application of this rule to other offenses impossible of completion without joint accord and action, Judge Van Devanter holding that there can be no indictment for conspiracy between the intended giver or givers and the intended taker or takers of a bribe.

The most recently published decision on this proposition is *U. S.* v. *Sager,* 49 Fed. (2d) (C. C. A. 2d Circuit) 725. Conviction of defendants upon a conspiracy charge was reversed upon the application of the rule that where

concert is necessary to an offense, conspiracy does not lie, and upon appeal, the count of the indictment charging conspiracy between the person bribing the juror and the juror accepting the bribe was held not to show a conspiracy.

So firmly established is the general limitation upon the use of the conspiracy count and its specific application to adultery as declared by the Courts, *e. g., Shannon* v. *Commonwealth,* 14 Pa. 226, *State of Iowa* v. *Law,* 179 N. W. 145 and cases there cited, and by Dr. Wharton (II Wharton's Criminal Law, Eleventh Edition, Sec. 1602, p. 1746), that a careful search of the Federal Reports covering the many years since those decisions does not reveal a single federal case involving a conspiracy charge to commit adultery unless it be *Corbett* v. *United States,* 299 Fed. 27 (C. C. A., Ninth Circuit), where the point here made was not presented or considered.

It follows, therefore, that the Circuit Court of Appeals erred in sustaining the conviction of petitioners on the authority of *U. S.* v. *Holte, supra,* and that a proper interpretation and application of the holding in that case necessitates a reversal of the judgment.

(3) Decision in conflict with decisions of other Courts of Appeal.

The Circuit Court of Appeals, in this case, held that proof of sexual intercourse between Gebardi and Rolfe established that the transportation had for its object an immoral purpose within the meaning of the White Slave Traffic Act (Sec. 398, Title 18, U. S. C. A.).

Many cases have been decided by Circuit Courts of Appeal of other circuits where, as in the instant case, im-

moral relations existed between the accused for long periods of time prior to trips in interstate commerce. Where the proof failed to show that the transportation was to effect, or at least to facilitate, the sex relationship, but on the contrary acted as a deterrent to the continuation of that relationship, the courts have held that such proof did not sustain convictions under the Act. It is true that in our case the conviction is for conspiracies to violate that Act. *Nevertheless, we urge that in order to sustain the conviction there must be proof beyond a reasonable doubt that the conspiracy had for its object interstate transportation for an immoral purpose.*

The decisions in conflict with the holding in the instant case are the following:

FOURTH CIRCUIT.

Van Pelt v. *U. S.*, 240 Fed. 346, p. 349:

> "Before the defendant could properly be convicted there must be evidence that the purpose, or one of the purposes, of the defendant, if he had more than one, in bringing the prosecutrix to Baltimore, was that he might have sexual intercourse with her. No possible reason is suggested by the record why he should have gone to the trouble and expense of having her make such a trip, and making it with her, merely in order that he might twice more exercise a liberty which he had taken hundreds of times before, and could just as well have taken an indefinite number of times more, if she had remained at home. * * * The defendant may have anticipated that while on the journey he would gratify his desire, as he doubtless would

have done, had the trip never been taken; but there is no evidence from which it can reasonably be held that such anticipation played any part whatever in inducing him to arrange for her coming to Baltimore."

Fisher v. *U. S.*, 266 Fed. 667, pp. 669-670.

Hunter v. *U. S.*, 45 Fed. (2d), 55, p. 56.

EIGHTH CIRCUIT.

Biggerstaff v. *U. S.*, 260 Fed. 926, p. 928:

"The accused was convicted of violating the first clause of the White Slave Traffic Act, which requires that the transportation in interstate commerce shall be for an immoral purpose specified. The mere fact that an immoral act was committed on an interstate journey does not of itself constitute that essential element of the offense. Its relevance in that respect is evidential, not substantive, and when relied on as evidence of a preconceived purpose care must be taken to regard it in a true perspective. The act may have been a casual incident in the journey, without forethought or anticipation at the time it was begun."

Sloan v. *U. S.*, 287 Fed. 91, p. 93.

Drossos v. *U. S.*, 16 Fed. (2d), 833, p. 834.

SECOND CIRCUIT.

Alpert v. *U. S.*, 12 Fed. (2d) 352, p. 354:

"The only evidence of what took place at the hotel in Pottsville was that given by the young woman, and whether or not the plaintiff in error intended to indulge in sexual relations before leaving the state of New York is left entirely to inference. There is no evidence of any arrangement between the couple

> or understanding between them for illicit intercourse after going to Pennsylvania. The fact that a journey from one state to another is followed by such intercourse, where the journey was not for that purpose, but wholly for other reasons, cannot be regarded as a violation of that act. *United States* v. *Fisher* (C. C. A.) 266 F. 670. To justify conviction, there should be convincing evidence of the intention to transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported."

The uncontradicted statements of petitioners introduced in evidence by the Government clearly show that illicit relations between Gebardi and Rolfe had existed and continued for a period of from three (R. 114) to seven (R. 113) years prior to the transportation alleged in this case. In view of that relationship, it cannot be inferred that the transportation was for an immoral purpose merely because the relations which had existed theretofore were continued after their departure from Chicago, and especially in view of the further fact that they were accompanied by Gebardi's brother. The brothers' presence militates against the inference that the transportation had as its object, immoral relations between petitioners. The trip in no way facilitated the immoral relations.

We contend, therefore, that the principles of law enunciated in the foregoing cases apply to the case at bar, and that the holding of the Circuit Court of Appeals for the Seventh Circuit is clearly in conflict with those decisions.

Conclusion.

It is submitted that for the reasons stated the writ of certiorari should be granted.

Respectfully submitted,

WILLIAM F. WAUGH,
Attorney for Jack Gebardi and Louise Rolfe Gebardi, Petitioners.

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No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1932

JACK GEBARDI AND LOUISE ROLFE GEBARDI,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The finding of the District Court that both of the petitioners were guilty of each of the offenses charged in the indictment appears at R. 14. The majority and dissenting opinions in the Circuit Court of Appeals (R. 177–185) are reported in 57 F. (2d) 617.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 2, 1932. (R. 186.) A petition for rehearing was denied May 3, 1932. (R. 188.)

The petition for certiorari was filed May 23, 1932. The writ was granted by this Court May 31, 1932. (R. 193.) Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether proof that a woman agreed to her transportation in interstate commerce for an immoral purpose (i. e., unlawful sexual intercourse with the man transporting her) was legally sufficient to establish the crime of conspiring with the one who transported her to commit the substantive offense of transportation.

2. Whether the evidence showed but one conspiracy instead of three, as charged in the indictment.

3. Whether the evidence showed an intent to transport for an immoral purpose, as alleged in each count of the indictment.

STATUTES INVOLVED

Section 37 of the Criminal Code, c. 321, 35 Stat. 1088, 1096 (U. S. C., Title 18, Sec. 88), provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

Section 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825 (U. S. C., Title 18, Sec. 398), otherwise known as the White Slave Traffic Act or the Mann Act, provides:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony,

and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

An indictment in three counts was returned against petitioners, hereinafter called the defendants, in the United States District Court for the Northern District of Illinois. (R. 3–6.) Each count charged the defendants, a man and a woman, with conspiring together and with others to the grand jurors unknown, to transport the woman defendant from one State to another over one or more railroad common carriers to the grand jurors unknown, for an immoral purpose, to wit, for the purpose of the defendants having unlawful sexual intercourse, they not then and there being husband and wife.[1] The termini of the transportation which was the object of each conspiracy were stated as follows: First count, Chicago, Ill., to Miami, Fla.; second count, Gulfport, Miss., to

[1] The indictment was returned on November 1, 1929. (R. 3.) A written stipulation entered into at the trial (R. 16) shows that at that time and at the time of the commission of the offenses charged in the indictment defendant Gebardi was married to one Helen C. Demory; that defendant Rolfe was a divorced woman; that Gebardi was divorced on May 2, 1931; and that Gebardi and Louise Rolfe were married on the next day, about three weeks before the trial of the instant case commenced. (R. 17.) It was also agreed that Louise Rolfe at the time of the trial was twenty-five years of age. (R. 16.)

Chicago, Ill.; third count, Chicago, Ill., to Jacksonville, Fla. Each count charged several overt acts, which consisted, among other things, of the traveling of the defendants together by railroad through the territorial jurisdiction of the trial court.

Defendants pleaded not guilty (R. 7), and the case was tried by the District Court without a jury, waivers consented to by the United States Attorney having theretofore been filed (R. 8–9). The District Court found both defendants guilty upon each count of the indictment (R. 14), saying:

> There was no commercial purpose involved in the transportation charged, but such purpose is not a material element of the crime forbidden by the Mann act. *Caminetti* v. *U. S.*, 242 U. S. 470. There was no direct evidence of sexual intercourse, but the undisputed circumstances carry to the court absolute conviction that the transportation proved had such intercourse for its purpose and that defendants conspired as charged.
>
> After a careful consideration of the evidence submitted and of the briefs and arguments of counsel I am convinced beyond any doubt that defendants are guilty and that no defense of any character exists.

Gebardi was sentenced to two years' imprisonment upon each count, the sentences to run consecutively, but it was directed that the sentences upon the second and third counts should be suspended

at the expiration of the sentence on the first count, and that the defendant should be placed on probation for a period of five years. Louise Rolfe was given a general sentence of four months in jail. (R. 15.) Upon appeal the convictions were affirmed, one judge dissenting. (R. 177–186.)

SUMMARY OF ARGUMENT

I

United States v. *Holte,* 236 U. S. 140, establishes that where a woman voluntarily consents or agrees to her transportation in interstate commerce for purposes forbidden by the White Slave Traffic Act, she may be charged with conspiring with the one transporting her to violate that Act. The Court said in that case that there was no reason "for not treating the preliminary agreement" of the parties "as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim." It follows that the conspiracy is established where there is proof of " the preliminary agreement of the parties." Both courts below found that there was proof of agreement between the defendants in the instant case that the defendant Rolfe should be transported in interstate commerce for an immoral purpose, to wit, the having of unlawful sexual intercourse between the defendants.

The *Holte* case is not distinguishable on the ground that the indictment there involved charged the man and woman with conspiring that he should transport her for purposes of prostitution instead

of for the purpose of sexual intercourse between the defendants, as in the instant case. The White Slave Traffic Act, it was held in *Caminetti* v. *United States,* 242 U. S. 470, was intended to reach not only "commercialized vice" but transportation as well for an immoral purpose not accompanied by expectation of pecuniary gain.

The doctrine of *concursus necessarius* does not apply in the instant case. Agreement or concurrence of the parties was not necessary to the commission of the substantive offense; hence that agreement or concurrence may be made the basis of a charge of conspiracy.

II

There is no merit in the defendants' contention that the evidence discloses merely one conspiracy instead of three, as charged in the indictment. The court below was fully justified under the evidence, which is reviewed at length at pp. 12–22, *infra,* in finding that each trip undertaken by the defendants was a distinct and separate enterprise, and that the two later trips were not contemplated when the first trip began.

III

Exhibits 80, 84, 85, and 86, as well as the evidence generally, conclusively support the finding of the courts below that the primary object of the defendants' travels was sexual intercourse, and that the defendants' immoral relations were not casual incidents of journeys undertaken for other purposes.

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ARGUMENT

I

THE DEFENDANTS' AGREEMENT THAT THE DEFENDANT ROLFE SHOULD BE TRANSPORTED BY HER CODEFENDANT FOR AN IMMORAL PURPOSE CONSTITUTED CONSPIRACY TO VIOLATE THE WHITE SLAVE TRAFFIC ACT

The defendants do not deny that the elements of conspiracy were properly charged in each count of the indictment. But they say that even if, as charged in the indictment, the proof shows that the woman voluntarily consented or agreed that she should be transported in interstate commerce for an immoral purpose—in the instant case the having of unlawful sexual intercourse with the man transporting her—the proof does not establish a conspiracy to commit an offense against the United States.[2] They attempt to distinguish *United States* v. *Holte,* 236 U. S. 140, which we regard as controlling.

In the *Holte* case the indictment charged the defendant, a woman, with conspiring with one Laudenschleger that the latter should cause her to be transported from one State to another for the purpose of prostitution, contrary to the White Slave Traffic Act. The District Court sustained a demurrer on the ground that as the woman was the victim of the

[2] We do not mean to infer that the proof in the instant case showed nothing more than that the woman consented to her transportation. The evidence, which is reviewed at length on pages 12–22, *infra*, shows active cooperation by the woman in the furtherance of the defendants' immoral undertakings.

transportation she could neither violate the statute nor conspire with another to violate it. (See Record *Holte* case, No. 628, October Term, 1914, p. 6.) To review this ruling the case was brought to this Court under the Criminal Appeals Act. Of course, this Court was not required to consider what was necessary to constitute the substantive offense under the White Slave Traffic Act, or to determine what evidence would be required to convict a woman under an indictment like the one before it. Conceding, inferentially, that the woman transported could not commit the substantive offense, it was pointed out that one may be guilty of a conspiracy to bring about that which he is himself free to do, and authorities were cited, among them several decisions holding that a woman may conspire to commit an abortion upon herself, even though under the law she could not commit the substantive crime or be held as an accomplice. Repudiating the assumption of the District Court that the woman must always be the victim of a violation of the White Slave Traffic Act, the Court held that her concurrence was not necessary to the offense, and concluded that there was no reason for saying that she could not conspire with another to cause her own transportation in violation of the Act. The Court was plainly of the opinion that there is no reason "for not treating the preliminary agreement" of the parties "as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim." See also *Corbett* v. *United States*, 299 Fed. 27, 29–30 (C. C. A. 9th).

Each case must, therefore, depend upon proof of "the preliminary agreement" of the parties. The defendants do not contend that Louise Rolfe was an unwilling victim and the proof fully sustains the finding that there was a preliminary agreement or conspiracy, as the court below held after reviewing the evidence in support of the finding of the District judge who heard the evidence.

The defendants attempt to distinguish the *Holte* case on the ground that in that case the indictment charged the man and the woman with conspiring that he should transport her for purposes of prostitution, which implies, of course, general promiscuity of intercourse, whereas the instant indictment merely charged that the transportation was for the purpose of sexual intercourse between the man and the woman. We fail to see how this constitutes a valid distinction between the two cases. It is settled that the White Slave Traffic Act was intended to reach not only "commercialized vice" but applies as well to transportation for an immoral purpose which is not accompanied by expectation of pecuniary gain. *Caminetti* v. *United States,* 242 U. S. 470.

The doctrine of *concursus necessarius,* upon which the defendants rely, does not apply in the instant case. Proof of agreement between the parties would have been wholly unnecessary to sustain a prosecution for commission of the substantive offense. As was said in the *Holte* case, p. 145, "The substantive offence might be committed with-

out the woman's consent, for instance, if she were drugged or taken by force." But where the parties confederate and agree that the White Slave Traffic Act should be violated, something is added beyond a mere violation of that statute. It is this added element of agreement or confederation which supplies the basis for a charge of conspiracy, and brings the case within the ordinary rule that a conspiracy constitutes a different offense from that which is the object of the conspiracy. *United States* v. *Rabinowich*, 238 U. S. 78. The distinction between such a case and those cited by the defendants is that the crimes considered in those cases (agreeing to receive a bribe, etc.), could not be consummated in the absence of agreement or concurrence of the parties, which thus became an essential part of the offense and precluded a charge of conspiracy. Here agreement or concurrence is not essential to the commission of the substantive offense, and consequently, as was said in the *Holte* case (p. 145), "the decisions that it is impossible to turn the concurrence necessary to effect certain crimes such as bigamy or dueling into a conspiracy to commit them do not apply."

II

THERE WAS SUBSTANTIAL EVIDENCE THAT THERE WERE THREE CONSPIRACIES, AS CHARGED IN THE INDICTMENT

It is next contended by the defendants that the evidence did not show three conspiracies, as charged in the indictment, and that the Govern-

ment has attempted to divide and redivide what was essentially one conspiracy.[3] We do not believe that the evidence supports this contention and submit that there was substantial evidence warranting the trial judge in finding that the three conspiracies charged in the indictment were established.

The first count of the indictment alleges that the defendants conspired on December 18, 1928, to transport the defendant Rolfe from Chicago to Miami for the purpose of their having unlawful sexual intercourse. Gebardi at that time was a married man and Louise Rolfe a divorced woman. (R. 16.) The evidence tends to show that Gebardi lived with his wife and their child, who was from five to seven years old, at the McCormick Hotel in Chicago, under the name of Johnson, from January 18, 1928, until March 28, 1928, when there was a shooting affray in the smoke shop of the hotel build-

[3] How this question was raised in the trial court does not specifically appear from the record. The grounds for the motions made by the defendants for a directed verdict are not stated. (R. 10, 118.) However, as the court below considered the question, we have discussed it here.

So far as Gebardi is concerned, the question has a practical bearing only in its relation to the probationary portion of his sentence. While the defendants were convicted on each of the three counts of the indictment, Gebardi was sentenced to imprisonment for two years only (*supra*, pp. 5-6), which is not more than the maximum which may be imposed for a single conspiracy. Gebardi would still be in the position of having to serve the prison portion of his sentence even if his contention were sound. As Louise Rolfe was sentenced to only four months in jail, the question is academic so far as she is concerned.

ing, in which, apparently, Gebardi was wounded. (R. 21–22, 29, 46–48; Exhibits 47–51, R. 99–100.) While there is no evidence indicating where the Gebardis resided from then until December, 1928, when the defendants started on their trip to Miami, there is nothing in the record to show that the Gebardis had separated. On September 13, 1928, Louise Rolfe was registered at the Lexington Hotel in Chicago under the name of George McManus, and the key to the room assigned to her was given to Gebardi (R. 24; Exs. 1, 3–7, R. 85–87), but the evidence shows that Gebardi did not live at the hotel during 1928 and that Louise Rolfe occupied the room alone until December 22, 1928 (R. 18, 21). On that date she checked out of the hotel, and, according to statements made by her and the defendant Gebardi in February, 1929, to certain Chicago police officials, the defendants left for Miami, Florida. (R. 112–114.)

On December 25, 1928, according to the evidence, the defendants appeared at the Dallas Park Hotel in Miami. Louise Rolfe was shown an apartment in the hotel but would not take it until, as she said, she had spoken to her "husband," who was outside in the car. After she had communicated with him, Gebardi registered the two defendants under the name of "Mr. and Mrs. Jack McGurn." (R. 38; Ex. 40, R. 97.) The defendant Gebardi, as the record shows repeatedly, was generally known in Chicago by the name of "Jack McGurn." (R. 18, 47, 113, 114.) The defendants remained at the

Dallas Park until December 31st. Louise Rolfe paid the hotel bills. (R. 38.) They then moved into a private house in Miami, where they stayed about three weeks. (R. 22, 23.) On January 5, 1929, while living at this house, Louise Rolfe was arrested for speeding. She gave her name as "Louise McGurn," stated that she was married, that her occupation was that of "housewife," and that her residence was the private house in which she and Gebardi were living. When booked she used the telephone and shortly thereafter Gebardi, understood by the officer to be named "Jack McGurn," appeared. The next morning, when the case was called, Gebardi was present and when the defendant Rolfe was fined, "got up from his chair" and paid the fine. (R. 22–23, 25–26.) Thus the arrival in Miami, and the illegal cohabitation there completed the first confederation between these defendants. Their future movements would require a new initiative.

We thereafter find the defendants back in Chicago where, on January 24, 1929, they were registered by the defendant Rolfe at the LaSalle Hotel not under the name they had employed on their trip to Florida but under the name "Mr. and Mrs. Vincent D'Oro, Havana, Cuba." (R. 27, 37, 39, 40; Exs. 13–14, 34, R. 88, 95.) Thus the return to Chicago ended the Florida adventure with the parties back in Chicago where their habitat was.

Reverting to the indictment, and passing the second count, it was alleged in the *third* count that the defendants conspired on the next day, January 25,

1929, that Louise Rolfe should be transported from Chicago to Jacksonville for the same immoral purpose alleged in the first count. And the evidence shows that on the day mentioned defendants left the LaSalle (R. 39), their baggage being checked on three one-way tickets to Jacksonville on the Seminole Limited train of the Illinois Central. The Pullman tickets showed a reservation of a compartment and a lower berth. The defendants were accompanied on this trip by Gebardi's brother Tony. The reports of the Pullman conductor establish that the compartment was occupied by two passengers and the lower berth by one passenger. (R. 27–28, 29, 30–32, 32–34, 35, 42–44, 45, 49–50, 55, 67–68, 111–112; Exs. 15–28, R. 89–94; Ex. 33, R. 95; Exs. 42–44, R. 97–98; Exs. 63–65, R. 103–104.)

The defendants reached Jacksonville, their ticket destination, about 7.10 on the morning of January 27, 1929. (R. 30.) Thus again they consummated their second adventure, newly planned, since otherwise the return to Chicago from the previous Florida trip, would have been as inexplicable as it would have been unnecessary. They stayed in Jacksonville only about an hour (R. 111), when their baggage was checked to St. Augustine over the Florida East Coast Line (R. 44–45, 82–83; Ex. 92, R. 115). The defendants remained in St. Augustine about four hours (R. 111), when their baggage was rechecked on passenger tickets for Biloxi, Miss., via Jacksonville. It arrived at Jacksonville about seven P. M. on the same day the defendants left

there and was delivered by the Seaboard Air Line to the Louisville & Nashville at River Junction, Florida, at five A. M. on January 28, 1929. It reached Biloxi about four o'clock that afternoon and was transferred to the Edgewater Gulf Hotel at Edgewater Park, Miss. (R. 52–54, 58–59, 82, 84–85; Exs. 56–62, R. 101–103; Exs. 73–74, R. 106; Exs. 93–94, R. 115; Ex. A, R. 118.) The fact that after arriving at Jacksonville, the journey was extended to St. Augustine and thence eventually to Biloxi, does not contradict the Government's contention that the second trip itself was a newly planned expedition, distinct in origin from the first Florida trip.

As on the first trip to Florida, Gebardi himself attended to the matter of registration at the Edgewater Gulf Hotel. Cohabitation being the pur pose, he registered Louise Rolfe and himself as "Mr. and Mrs. Vincent D'Oro, Congress Hotel, Chicago," and his brother Tony as "Mr. Anthony D'Oro," of the same address. The registration cards indicate *that the duration of the visit was to be two weeks.* (R. 66–67; Exs. 78–79, R. 107.) No return from Biloxi was in evidence; a prolonged stay was evidently contemplated. The party was assigned a double room and a single room at rates somewhere near the maximum. As Gebardi did not have a reservation, the room clerk reported the matter to the management. (R. 66–67.)

It also appears that some time during the late afternoon of the day they arrived the party sent

some clothing down to the valet department of the hotel for pressing. No names appeared on the tags accompanying the clothes, but the porter noticed that one of the suits bore the label "J. McGurn." When he took the clothes back to Gebardi's room, after having made a check upon the name at the cashier's desk, he asked Gebardi to whom the clothes should be charged, and Gebardi replied, "D'Oro." The porter reported the incident to the management. (R. 63–64.) That evening Gebardi was requested to see the manager of the hotel. At this interview credit references were insisted upon. These references not being satisfactory, Gebardi was requested to make a cash deposit of three or four hundred dollars. He immediately pulled out a roll of bills but was told to make the deposit with the cashier, which he later did. During the course of the interview Gebardi stated that he had been a salesman connected with some "ice cream company" or "biscuit company," but that "he was not then working"; that Louise Rolfe was his wife; and that the length of their stay would depend upon how he liked the place, "possibly two or three weeks." (R. 63, 65–66, 70–72.) The next day the manager of the hotel received information from various organizations in reference to Gebardi's credit and left word for Gebardi to see him again. Gebardi did not do so, but instead left with his party shortly after breakfast the next morning, January 30th, thus remaining at the hotel a little less than two days instead of the two or three weeks

he had planned. (R. 71.) This sudden change of plan clearly gave rise to the agreement to leave Biloxi for some new destination. This brings us logically to the second count of the indictment, which alleges that defendants conspired to transport Louise Rolfe from Gulfport, Miss., to Chicago for the same immoral purpose alleged in the other two counts. (R. 4–5.) It is true that this count charges that the conspiracy was entered into January 25, 1929, in the Eastern Division of the Southern District of Illinois. But the date was alleged under a *videlicit,* and it is well settled that it is immaterial where a conspiracy is entered into so long as some one of the overt acts takes place in the district of trial. *Hyde* v. *United States,* 225 U. S. 347, 366–367; *Brown* v. *Elliott,* 225 U. S. 392; *United States* v. *Linton,* 223 Fed. 677 (W. D. Wash).

The third overt act alleged in the count was that the defendants traveled together through the district of trial on a railroad car bound from the State of Mississippi. As we shall see, that overt act was clearly proved.

The evidence shows that the same date that Gebardi was requested a second time to see the manager of the Edgewater Gulf Hotel he arranged with the head porter of the hotel for the purchase of three tickets and sleeping accommodations to Chicago and for the checking of the party's baggage. (R. 57–58, 59–62; Exs. 71–72, R. 105.) The ticket agent of the Illinois Central at Gulfport

assigned the parties three seats from Gulfport to Jackson, Miss., which is the junction point of the main line from New Orleans to Chicago, and also reserved for the party a drawing room upon the Panama Limited from Jackson. (R. 56–57; Ex. 45–46, R. 98; Exs. 66–68, 70, R. 104–105.) The train bearing the Gebardi party left Gulfport at noon on January 30th. It reached Memphis, Tenn., at 9 o'clock that night, when one of the members of the party was transferred from the drawing-room to a lower berth. (R. 69–70; Ex. 45, R. 98; Exs. 81, 83, R. 108.) The Panama Limited arrived at Chicago at 9.30 on the morning of January 31st. (R. 69.)

Again immediate cohabitation was sought. The baggage of the defendants was taken to the Stevens Hotel. (R. 34–36, 41, 81–82, 83–84; Exs. 29–32, R. 94–95; Ex. 41, R. 97; Ex. 95, R. 115.) Gebardi did not attend to the registering on this occasion. That was taken care of by Louise Rolfe, who registered the defendants as "Mr. and Mrs. J. Vincent D'Oro, of Havana, Cuba." The first room assigned was not suitable, and the defendants were soon given a better room. (R. 37, 51–52, 68–69; Ex. 34, R. 95; Exs. 54–55, R. 100.) The defendants occupied this room until February 27, 1929. (R. 46; Exs. 35–39, R. 95–97.) The bills were paid by Louise Rolfe. (R. 50–51.)

During the month that they were at the Stevens Hotel the defendants left their room only occasionally. They stayed in the room, according to Louise

Rolfe's statement to the Chicago police, "just about 24 hours a day." Their meals were usually served in their room; they had no visitors, and went to see only a few shows. (R. 111–112.) This was verified by Gebardi in a like statement, in which he said that "I haven't been out of my room for any purpose whatever, not even to go out and buy a package of cigarettes." (R. 114.) On February 27, 1929, the defendant's room was searched by a party of Chicago police. They found Louise Rolfe attired in a dressing gown and slippers, while Gebardi had on a pair of house slippers, trousers, and a dressing robe (R. 74–79). During the search of the room the officers picked up Government's Exhibits 80, 84, 85, and 86. (R. 78, 108, 109–110.) According to a hand-writing expert, Exhibits 80 and 85 were written by Louise Rolfe (R. 81; Ex. 34, R. 95; R. 37), while Exhibits 84 and 86 were written by Gebardi (R. 81; Ex. 40, R. 97; R. 38; Ex. 77, R. 107; R. 71). It is evident from the addresses appearing on these exhibits that they were written while the defendants were away from Chicago on their various journeys (R. 22, 23, 29, 43). They indicate the dominant and immoral purpose of the defendants' travels.

As a result of the search by the Chicago police officers, a prosecution for fornication appears to have been instituted against Gebardi in a municipal court in Chicago. (R. 74.) Just what the result of this prosecution was the record does not show.

The defendants appear to have left the Stevens Hotel just after their room was searched on February 27, 1929, and we hear no more of them until May 2, 1929, when it appears that they registered in the Lexington Hotel in Chicago as "Louis Nolan and wife," and that they remained there until September, 1929. (R. 18, 20, 24–25; Ex. 2, R. 86; Exs. 8–12, R. 87–88.)

Neither of the defendants took the stand, nor did they offer any evidence to rebut the Government's testimony.

The evidence was carefully scrutinized in the court below. Considered in the light of the reasonable inferences to be drawn therefrom, we submit that it fully justified the following statement made by that court in its opinion (R. 180):

> The court was amply justified in finding, we think, that when the parties left Chicago for Miami on the 18th of December they did not contemplate a trip on January 25th from Chicago to Jacksonville, Florida. This second trip was separate and distinct from the first one and was undertaken pursuant to plans perfected by appellants after the first plan had been carried out in whole or in part. Nor is there any evidence from which the court might have found that the conspiracy included not only the said trips on the two different dates from Chicago to Miami and from Chicago to Jacksonville, a month apart, but that said appellants should go from Gulfport to Chicago. The trips were entirely separate; the actions of Gebardi in securing the transportation were separate

and disassociated one from the other, and we see no escape from the finding that the three trips were separate and the conspiracies preceding them were separate and distinct one from the other.

Of course, as the court below observed (R. 180), the function of an appellate court is merely to ascertain whether there was substantial evidence to support the finding of the trial court, not itself to make a finding of fact. *Caminetti* v. *United States*, 242 U. S. 470, 495–496, *supra*.

III

THERE WAS SUBSTANTIAL EVIDENCE THAT THE TRANSPORTATION WAS FOR AN IMMORAL PURPOSE

Finally, it is contended that the evidence shows that illicit relations had existed between the defendants prior to the trips in question for a period ranging from three to seven years and that therefore it can not be inferred that the transportation was for an immoral purpose. The defendants base this contention upon statements given by Gebardi and Louise Rolfe to the Chicago police officers when their room in the Stevens Hotel was searched. (R. 113, 114.)

In these statements the defendants not only claimed that they had been living together for the period stated, but indicated they had been married that long. But these assertions were untrue, as is shown by the stipulation of agreed facts introduced at the trial (R. 16) showing that Gebardi and Rolfe were not married until May 3, 1931, which was shortly before the trial and two years after the

commission of the offenses in question, and also by the evidence hereinbefore referred to (*supra*, pp. 12–13), which indicates that not only were Gebardi and Louise Rolfe *not* living together prior to the time they started on their first trip to the South, but that Gebardi had been living with his lawful wife and child.

Exhibits 80, 84, 85, and 86 (R. 108–109), as well as the evidence generally, conclusively support the finding of the courts below that the primary object of the defendants' travels was sexual intercourse. The defendants' immoral relations were not casual incidents of journeys undertaken for other purposes. Thus the decisions recited in defendants' brief (pp. 14–16) are not in point.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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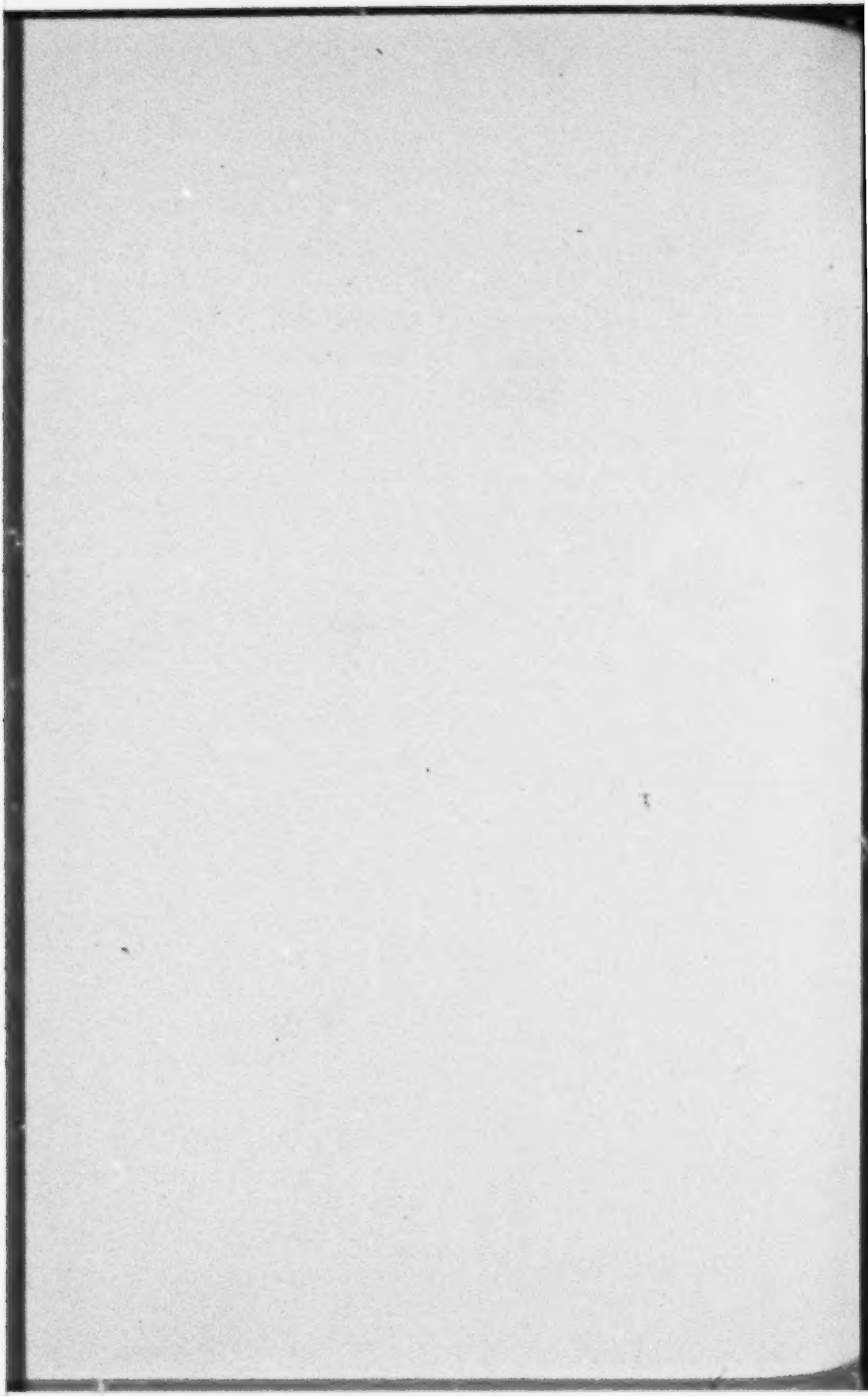

SUPREME COURT OF THE UNITED STATES.

No. 97.—October Term, 1932.

Jack Gebardi and Louise Rolfe Gebardi, Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 7, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

This case is here on certiorari, 286 U. S. 539, to review a judgment of conviction for conspiracy to violate the Mann Act (36 Stat. 825; 18 U. S. C., § 397 *et seq.*). Petitioners, a man and a woman, not then husband and wife, were indicted in the District Court for Northern Illinois, for conspiring together, and with others not named, to transport the woman from one state to another for the purpose of engaging in sexual intercourse with the man. At the trial without a jury there was evidence from which the court could have found that the petitioners had engaged in illicit sexual relations in the course of each of the journeys alleged; that the man purchased the railway tickets for both petitioners for at least one journey, and that in each instance the woman, in advance of the purchase of the tickets, consented to go on the journey and did go on it voluntarily for the specified immoral purpose. There was no evidence supporting the allegation that any other person had conspired. The trial court overruled motions for a finding for the defendants, and in arrest of judgment, and gave judgment of conviction, which the Court of Appeals for the Seventh Circuit affirmed, 57 F. (2d) 617, on the authority of *United States* v. *Holte*, 236 U. S. 140.

The only question which we need consider here is whether, within the principles announced in that case, the evidence was sufficient to support the conviction. There the defendants, a man and a woman, were indicted for conspiring together that the man

should transport the woman from one state to another for purposes of prostitution. In holding the indictment sufficient, the Court said (p. 144):

"As the defendant is the woman, the District Court sustained a demurrer on the ground that although the offence could not be committed without her she was no party to it but only the victim. The single question is whether that ruling is right. We do not have to consider what would be necessary to constitute the substantive crime under the act of 1910 [the Mann Act], or what evidence would be required to convict a woman under an indictment like this, but only to decide whether it is impossible for the transported woman to be guilty of a crime in conspiring as alleged."

The Court assumed that there might be a degree of cooperation which would fall short of the commission of any crime, as in the case of the purchaser of liquor illegally sold. But it declined to hold that a woman could not under some circumstances not precisely defined, be guilty of a violation of the Mann Act and of a conspiracy to violate it as well. Light is thrown upon the intended scope of this conclusion by the supposititious case which the Court put (p. 145):

"Suppose, for instance, that a professional prostitute, as well able to look out for herself as was the man, should suggest and carry out a journey within the act of 1910 in the hope of blackmailing the man, and should buy the railroad tickets, or should pay the fare from Jersey City to New York, she would be within the letter of the act of 1910 and we see no reason why the act should not be held to apply. We see equally little reason for not treating the preliminary agreement as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim."

In the present case we must apply the law to the evidence; the very inquiry which was said to be unnecessary to decision in *United States* v. *Holte, supra.*

First. Those exceptional circumstances envisaged in *United States* v. *Holte, supra,* as possible instances in which the woman might violate the act itself, are clearly not present here. There is no evidence that she purchased the railroad tickets or that hers was the active or moving spirit in conceiving or carrying out the transportation. The proof shows no more than that she went willingly upon the journeys for the purposes alleged.

Section 2 of the Mann Act[1] (18 U. S. C. § 398), violation of which is charged by the indictment here as the object of the conspiracy, imposes the penalty upon "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery or for any other immoral purpose . . ." Transportation of a woman or girl whether with or without her consent, or causing or aiding it, or furthering it in any of the specified ways, are the acts punished, when done with a purpose which is immoral within the meaning of the law. See *Hoke* v. *United States,* 227 U. S. 308, 320.

The Act does not punish the woman for transporting herself; it contemplates two persons—one to transport and the woman or girl to be transported. For the woman to fall within the ban of the statute she must, at the least, "aid or assist" someone else in transporting or in procuring transportation for herself. But such aid and assistance must, as in the case supposed in *United States* v. *Holte, supra,* 145, be more active than mere agreement on her part to the transportation and its immoral purpose. For the statute is drawn to include those cases in which the woman con-

[1] "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court."

sents to her own transportation. Yet it does not specifically impose any penalty upon her, although it deals in detail with the person by whom she is transported. In applying this criminal statute we cannot infer that the mere acquiescence of the woman transported was intended to be condemned by the general language punishing those who aid and assist the transporter,[2] any more than it has been inferred that the purchaser of liquor was to be regarded as an abettor of the illegal sale. *State* v. *Teahan,* 50 Conn. 92; *Lott* v. *United States,* 205 Fed. 28; cf. *United States* v. *Farrar,* 281 U. S. 624, 634. The penalties of the statute are too clearly directed against the acts of the transporter as distinguished from the consent of the subject of the transportation. So it was intimated in *United States* v. *Holte, supra,* and this conclusion is not disputed by the Government here, which contends only that the conspiracy charge will lie though the woman could not commit the substantive offense.

Second. We come thus to the main question in the case, whether, admitting that the woman, by consenting, has not violated the Mann Act, she may be convicted of a conspiracy with the man to violate it. Section 37 of the Criminal Code (18 U. S. C., § 88), punishes a conspiracy by two or more persons "to commit any offense against the United States". The offense which she is charged with conspiring to commit is that perpetrated by the man, for it is not questioned that in transporting her he contravened § 2 of the Mann Act. Cf. *Caminetti* v. *United States,* 242 U. S. 470. Hence we must decide whether her concurrence, which was not criminal before the Mann Act, nor punished by it, may, without more, support a conviction under the conspiracy section, enacted many years before.[3]

As was said in the *Holte* case (p. 144), an agreement to commit an offense may be criminal, though its purpose is to do what some

[2] § 3 of the Act (18 U. S. C., § 399), directed toward the persuasion, inducement, enticement or coercion of the prohibited transportation, also includes specifically those who "aid or assist" in the inducement or the transportation. Yet it is obvious that those words were not intended to reach the woman who, by yielding to persuasion, assists in her own transportation.

[3] § 30, Act of March 2, 1867 (14 Stat. 471, 484) "except for an omitted not relevant provision, . . . has continued from that time to this, in almost precisely its present form". See United States *v.* Gradwell, 243 U. S. 476, 481.

of the conspirators may be free to do alone.[4] Incapacity of one to commit the substantive offense does not necessarily imply that he may with impunity conspire with others who are able to commit it.[5] For it is the collective planning of criminal conduct at which the statute aims. The plan is itself a wrong which, if any act be done to effect its object, the state has elected to treat as criminal, *Clune* v. *United States,* 159 U. S. 590, 595. And one may plan that others shall do what he cannot do himself. See *United States* v. *Rabinowich,* 238 U. S. 78, 86, 87.

But in this case we are concerned with something more than an agreement between two persons for one of them to commit an offense which the other cannot commit. There is the added element that the offense planned, the criminal object of the conspiracy, involves the agreement of the woman to her transportation by the man, which is the very conspiracy charged.

Congress set out in the Mann Act to deal with cases which frequently, if not normally, involve consent and agreement on the part of the woman to the forbidden transportation. In every case in which she is not intimidated or forced into the transportation, the statute necessarily contemplates her acquiescence. Yet this acquiescence, though an incident of a type of transportation speci-

[4]The requirement of the statute that the object of the conspiracy be an offense against the United States, necessarily statutory, United States *v.* Hudson, 7 Cranch 32, avoids the question much litigated at common law (see cases cited in Wright, The Law of Criminal Conspiracies [Carson ed. 1887] and in Sayre, Criminal Conspiracy, 35 Harv. L. Rev. 393) of the criminality of combining to do an act which any one may lawfully do alone.

[5]So it has been held repeatedly that one not a bankrupt may be held guilty under § 37 of conspiring that a bankrupt shall conceal property from his trustee (Bankruptcy Act § 29[b], 11 U. S. C., § 52). Tapack *v.* United States, 220 Fed. 445, certiorari denied 238 U. S. 627; Jollit *v.* United States, 285 Fed. 209, certiorari denied 261 U. S. 624; Israel *v.* United States, 3 F. (2d) 743; Kaplan *v.* United States, 7 F. (2d) 594, certiorari denied 269 U. S. 582. And see United States *v.* Rabinowich, 238 U. S. 78, 86, 87. These cases proceed upon the theory (see United States *v.* Rabinowich, supra, 86) that only a bankrupt may commit the substantive offense though we do not intimate that others might not be held as principals under Criminal Code, § 332 (18 U. S. C., § 550). Cf. Barron *v.* United States, 5 F. (2d) 799.

In like manner Chadwick *v.* United States, 141 Fed. 225, sustained the conviction of one not an officer of a national bank for conspiring with an officer to commit a crime which only he could commit. And see United States *v.* Martin, 4 Cliff. 156; United States *v.* Stevens, 44 Fed. 132.

fically dealt with by the statute, was not made a crime under the Mann Act itself. Of this class of cases we say that the substantive offense contemplated by the statute itself involves the same combination or community of purpose of two persons only which is prosecuted here as conspiracy. If this were the only case covered by the Act, it would be within those decisions which hold, consistently with the theory upon which conspiracies are punished, that where it is impossible under any circumstances to commit the substantive offense without cooperative action, the preliminary agreement between the same parties to commit the offense is not an indictable conspiracy either at common law, *Shannon and Nugent* v. *Commonwealth,* 14 Pa. St. 226; *Miles* v. *State,* 58 Ala. 390; cf. *State* v. *Law,* 189 Iowa 910; see *State ex rel. Durner* v. *Huegin,* 110 Wis. 189, 243, or under the federal statute.[6] See *United States* v. *Katz,* 271 U. S. 354, 355; *Norris* v. *United States,* 34 F. (2d) 839, 841, reversed on other grounds, 281 U. S. 619; *United States* v. *Dietrich,* 126 Fed. 664, 667. But criminal transportation under the Mann Act may be effected without the woman's consent as in cases of intimidation or force (with which we are not now concerned). We assume, therefore, for present purposes, as was suggested in the *Holte* case, *supra,* 145, that the decisions last mentioned do not in all strictness apply.[7] We do not rest our decision upon the theory of those cases, nor upon the related one that the attempt is to prosecute as conspiracy acts identical with

[6]The rule was applied in United States *v.* N. Y. C. & H. R. R. Co., 146 Fed. 298; United States *v.* Sager, 49 F. (2d) 725. In the following cases it was recognized and held inapplicable for the reason that the substantive crime could be committed by a single individual. Chadwick *v.* United States, 141 Fed. 225; Laughter *v.* United States, 259 Fed. 94; Lisansky *v.* United States, 31 F. (2d) 846, certiorari denied 279 U. S. 873. The conspiracy was also deemed criminal where it contemplated the cooperation of a greater number of parties than were necessary to the commission of the principal offense, as in Thomas *v.* United States, 156 Fed. 897; McKnight *v.* United States, 252 Fed. 687; cf. Vannata *v.* United States, 289 Fed. 424; Ex parte O'Leary, 53 F. (2d) 956. Compare Queen *v.* Whitchurch, 24 Q. B. D. 420.

[7]It should be noted that there are many cases not constituting "a serious and substantially continued group scheme for cooperative law breaking" which may well fall within the recommendation of the 1925 conference of senior circuit judges that the conspiracy indictment be adopted "only after a careful conclusion that the public interest so requires." Att'y Gen. Rep. 1925, pp. 5, 6.

the substantive offense. *United States* v. *Dietrich,* 126 Fed. 664. We place it rather upon the ground that we perceive in the failure of the Mann Act to condemn the woman's participation in those transportations which are effected with her mere consent, evidence of an affirmative legislative policy to leave her acquiescence unpunished. We think it a necessary implication of that policy that when the Mann Act and the conspiracy statute came to be construed together, as they necessarily would be, the same participation which the former contemplates as an inseparable incident of all cases in which the woman is a voluntary agent at all, but does not punish, was not automatically to be made punishable under the latter. It would contravene that policy to hold that the very passage of the Mann Act effected a withdrawal by the conspiracy statute of that immunity which the Mann Act itself confers.

It is not to be supposed that the consent of an unmarried person to adultery with a married person, where the latter alone is guilty of the substantive offense, would render the former an abettor or a conspirator, compare *In Re Cooper,* 162 Cal. 81, 85, or that the acquiescence of a woman under the age of consent would make her a co-conspirator with the man to commit statutory rape upon herself. Compare *Queen* v. *Tyrrell* [1894] 1 Q. B. 710. The principle, determinative of this case, is the same.

On the evidence before us the woman petitioner has not violated the Mann Act and, we hold, is not guilty of a conspiracy to do so. As there is no proof that the man conspired with anyone else to bring about the transportation, the convictions of both petitioners must be

Reversed.

Mr. Justice CARDOZO concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.